

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

NORTHERN BOTTLING CO., INC.,	:	
	:	
Plaintiff,	:	
	:	Case No.
-vs-	:	4:15-CV-00133
	:	
PEPSICO, INC.,	:	
	:	
Defendant.	:	

TRANSCRIPT OF
AUDIOVISUAL DEPOSITION OF TODD HILLESTAD

Taken At
316 North Fifth Street
Bismarck, North Dakota
August 2, 2016

(APPEARANCES AS NOTED HEREIN)

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-- and --

FOR THE PLAINTIFF.

FOR THE DEFENDANT.

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C O N T E N T S

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DEPOSITION OF TODD HILLESTAD

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1 (Audiovisual Deposition of **TODD HILLESTAD**,
 2 a witness of lawful age, taken on behalf of the
 3 Defendant in the above-entitled cause, pending in
 4 the District Court of the United States for the
 5 District of North Dakota, Western Division,
 6 pursuant to notice, before Stephanie A. Smith, a
 7 Registered Professional Reporter and Notary Public
 8 in and for the State of North Dakota, at the law
 9 offices of Zuger Kirmis & Smith, 316 North Fifth
 10 Street, in the City of Bismarck, County of
 11 Burleigh, State of North Dakota, on the 2nd day of
 12 August, 2016, commencing at 9:13 a.m., counsel
 13 appearing on behalf of the respective parties as
 14 hereinbefore indicated:)

15 -----

16 (The following proceedings were had and
 17 made of record:)

18 (Deposition Exhibits 1, 2 and 3 were
 19 marked for identification.)

20 THE VIDEOGRAPHER: Let the record show
 21 that this videotaped deposition of Todd Hillestad
 22 is being taken on behalf of the defendant at Zuger
 23 Kirmis & Smith in Bismarck, North Dakota, on
 24 August 2, 2016, at 9:13 a.m.

25 The audiovisual recording is being done by

1 that this deposition of Todd Hillestad is taking
 2 place pursuant to notice and will be conducted in
 3 accordance with the Federal Rules of Civil
 4 Procedure.

5 **TODD HILLESTAD**,

6 having been first duly sworn, was examined and
 7 testified as follows:

8 **EXAMINATION**

9 **BY MR. QUINN:**

10 Q. Mr. Hillestad, as I just indicated, my
 11 name is Tom Quinn, and I represent Pepsico, Inc.,
 12 in this lawsuit.

13 Have you ever given a deposition before?

14 **A.** I have not.

15 Q. Have you ever been a witness in any
 16 testimonial --

17 **A.** I have --

18 Q. -- hearing?

19 **A.** -- not.

20 Q. Well, let me just give you a couple of
 21 pointers in terms of my questioning today. If you
 22 do not hear my question or if you don't understand
 23 it, just ask me to repeat it or rephrase it and
 24 I'll attempt to do so. Is that okay?

25 **A.** That's fine.

6

1 Shari Huettl and shorthand reporting is being done
 2 by Stephanie Smith of Emineth & Associates.

3 The caption of the case is Northern
 4 Bottling Company, Incorporated, plaintiff, versus
 5 Pepsico, Incorporated, defendant.

6 Would you please state your appearance.

7 **MR. QUINN:** My name is Thomas Quinn of the
 8 Riley Safer Holmes & Cancila firm, and I am
 9 appearing on behalf of the defendant, Pepsico, Inc.

10 **MR. RAGAIN:** I'm Jim Ragain. I'm -- I'm
 11 here for the plaintiff, Northern Bottling.

12 **THE VIDEOGRAPHER:** Would you all like to
 13 introduce yourselves --

14 **MR. QUINN:** I think so.

15 **THE VIDEOGRAPHER:** -- for the record?

16 **MR. PAGEL:** Sure. I'm Rod Pagel. I'm
 17 also here for the plaintiff, Northern Bottling.

18 **MR. LANGER GOKEY:** I'm Langer Gokey here
 19 for the plaintiff, Northern Bottling.

20 **MR. WILL GOKEY:** Will Gokey, here for the
 21 plaintiff, Northern Bottling.

22 **THE VIDEOGRAPHER:** Please swear the
 23 witness.

24 (Witness sworn.)

25 **MR. QUINN:** Let the record also reflect

8

1 Q. And the other thing that -- that I will
 2 say is that I need to finish my question before you
 3 begin answering so that the court reporter is able
 4 to get my question fully in the record and -- and
 5 your answer. Understood?

6 **A.** Understood.

7 Q. And -- and one last tip, your answers need
 8 to be audible answers. A nod of the head, while it
 9 could be captured by the video camera, isn't
 10 necessarily captured by the court reporter here.
 11 So you should answer verbally, even if you do nod
 12 your head at the same time. Understood?

13 **A.** Understood.

14 Q. Okay. What, if anything, did you do to
 15 prepare for your deposition today?

16 **A.** We had a call with Jim last Thursday and a
 17 short one on Monday where he relayed kind of what
 18 would take process.

19 Q. Okay. Did you review any documents to
 20 refresh your recollection about issues or events
 21 relating to this case?

22 **A.** I did on Thursday prior to the meeting
 23 with Mr. Ragain. I went through a couple e-mails.

24 Q. Okay. Did any of those documents refresh
 25 your recollection?

1 A. Not really.
 2 Q. Okay.
 3 A. To be honest, I can't really remember what
 4 I read.
 5 Q. All right. What I'd like to do is to
 6 start by showing you what the court reporter has
 7 marked as Hillestad Deposition Exhibit 1. It
 8 purports to be a copy of your LinkedIn profile.
 9 A. Mm-hmm.
 10 Q. Would you take a look at Deposition 1 and
 11 confirm for me that it is, indeed, your LinkedIn
 12 profile.
 13 A. It appears to be, yes.
 14 Q. Okay. Now, I'm going to ask you some
 15 questions about your background, and the reason I
 16 gave you Exhibit 1 is to assist you and -- and me
 17 in terms of getting a little sense of your
 18 educational background as well as your work
 19 history.
 20 So it's correct that you graduated from
 21 Minot State University in 2005?
 22 A. I attended Minot State University in 2005.
 23 I had enough credits to graduate with my marketing.
 24 I attended up through last fall for both degrees --
 25 Q. Okay.

10

1 A. -- for a management and marketing.
 2 Q. Did you -- have you gotten your degrees?
 3 A. Yes.
 4 Q. And when did you get them?
 5 A. I received both of them when I graduated,
 6 which would have been the fall of last year.
 7 Q. Okay. So fall of 2015?
 8 A. Yes.
 9 Q. And your degrees were in business
 10 administration and management and marketing?
 11 A. That's correct.
 12 Q. Okay. Did you have any concentration with
 13 respect to --
 14 A. No, I didn't.
 15 Q. -- either of those subjects.
 16 Could you tell us your work history since
 17 2005.
 18 A. Since 2005. I've held a lot of positions
 19 under Northern Bottling, so excuse me if I can't
 20 quite recollect the dates. But I've been in sales,
 21 operations, did some work in service, management,
 22 warehousing. Pretty much held positions all during
 23 those departments since that time.
 24 Q. So according to your LinkedIn bio, the
 25 first page, it indicates that since July of 2005

1 you've been a territory manager --
 2 A. Mm-hmm.
 3 Q. -- at Northern Bottling; is that correct?
 4 A. That's correct.
 5 Q. Okay. So why is it that -- that -- that
 6 you didn't have your degree as of 2005? You just
 7 hadn't acquired enough credits?
 8 A. That's correct. I could have got the
 9 marketing degree, but I would have had to graduate
 10 and then reapply to get my second degree. So it
 11 was easier on my part just to stay in school and
 12 get a -- a double major or a dual degree.
 13 Q. Okay. Did you -- did you have the title
 14 of territory manager when you began working at
 15 Northern in July of 2005?
 16 A. I couldn't tell you to be certain when we
 17 actually officially made the title change, so I
 18 can't give you an exact date on that, but I would
 19 recollect so if I --
 20 Q. Okay. I just -- I ask you the question --
 21 A. Mm-hmm.
 22 Q. -- because if you look at page 1 --
 23 A. Mm-hmm.
 24 Q. -- it indicates that you were the
 25 territorial -- territory manager beginning in

12

1 July 2005 to the -- to the present, which is
 2 11 years and one month.
 3 A. Mm-hmm.
 4 Q. Have you retained that title over all that
 5 time?
 6 A. Between 2005 and -- 11 years and one
 7 month?
 8 Q. Yes.
 9 A. I switched the title to franchise manager
 10 I believe it was in July 2014.
 11 Q. Okay.
 12 A. So that would have been my title prior to
 13 that.
 14 Q. All right. Could you tell us what your
 15 duties and responsibilities were as a territory
 16 manager at Northern Bottling?
 17 A. I oversaw the presale reps and small
 18 format in the Minot market.
 19 Q. What are presale reps?
 20 A. Sales reps. The people that go out and
 21 take the orders from the customer, selling
 22 programs, promotions.
 23 Q. And how about small format, what --
 24 A. Small --
 25 Q. -- does that mean?

1 **A.** I'm sorry. That would be small C-stores,
 2 essentially anybody but Walmart®, large grocery
 3 stores, the mass merchants at large market as we
 4 call them.
 5 **Q.** So I'm going to ask you to explain a few
 6 terms so that anyone who looks at this deposition
 7 understands what you mean. When you're referring
 8 to C-stores, are you referring to convenience and
 9 gas outlets?
 10 **A.** I am.
 11 **Q.** Okay. And how about the other formats
 12 that you were talking about?
 13 **A.** Large format would -- in our terms would
 14 be a grocery store, a larger grocery store. Mass
 15 merchant would be a national chain, merchant as far
 16 as -- example would be Walmart®, Target, Kmart.
 17 **Q.** And what was the geographical territory of
 18 the Minot market?
 19 **A.** The Minot market, we'd go as far south as
 20 Max, as far north as the Canadian border, as far
 21 west as Stanley and as far east as Drake.
 22 **Q.** Okay. All in North Dakota?
 23 **A.** All in North Dakota, yes.
 24 **Q.** Okay. So when you say that you oversaw
 25 the presale reps, what did that job duty entail?

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1 **A.** I'd help them put together programs. I'd
 2 fill in for them when they would be sick or unable
 3 to perform their duties. I'd sell to their
 4 customers programs. I'd train our sales reps. I
 5 work with our delivery department. Pretty much
 6 things of that nature.
 7 **Q.** Did you have direct contact with
 8 customers?
 9 **A.** I did.
 10 **Q.** And these presale reps that you oversaw,
 11 they were selling to C-stores and small format?
 12 **A.** That's correct.
 13 **Q.** Okay. So during that territory manager
 14 period, was your principal focus on the C-stores
 15 and fall -- and small format?
 16 **A.** Small format, yes.
 17 **Q.** Okay. How many presale representatives
 18 did you oversee -- let me strike that. Let's try
 19 to put a little time period on it.
 20 So 11 years and one month is a pretty long
 21 period of time. Did your duties or
 22 responsibilities change at all over that period?
 23 **A.** Our duties change almost on a daily basis
 24 with a small company. You've got to wear a lot of
 25 hats, so we do what's needed to get the job done.

1 **Q.** Could you be a little more specific in --
 2 in -- in terms of the principal responsibilities --
 3 **A.** Mm-hmm.
 4 **Q.** -- that you -- you had. Did you have --
 5 in other words, did you have the same duties in,
 6 say, 2012 that you did in 2005 when you began
 7 working for Northern?
 8 **A.** I would say we had additional duties. As
 9 we develop in the company, we add additional
 10 responsibilities, duties as, I guess, we feel up to
 11 the task. So more -- more in 2005 would be more of
 12 a supervision role, making sure the routes get
 13 done. You know, towards the end I was probably
 14 working on more programs, different aspects of the
 15 company.
 16 **Q.** Could you explain to us what -- what was
 17 involved in working on programs?
 18 **A.** They could be as simple as building a
 19 PowerPoint to sell a particular product or working
 20 on an agreement for space for a year or to acquire
 21 new business.
 22 **Q.** So these were all programs to present to
 23 customers?
 24 **A.** Customers or internal in the organization.
 25 **Q.** You mean within Northern --

16

1 **A.** Mm-hmm.
 2 **Q.** -- Bottling?
 3 Okay. You do need to just wait until I
 4 finish asking --
 5 **A.** Oh, sorry.
 6 **Q.** -- the question, just so it's a little
 7 easier for the court reporter, if you can.
 8 So during that -- that period of time, did
 9 you -- strike that.
 10 Let me just ask this question first: Did
 11 you start working at Northern right out of Minot
 12 State?
 13 **A.** I started working in Northern right out of
 14 high school.
 15 **Q.** I see.
 16 **A.** And then I went to Minot State while I was
 17 working at Northern.
 18 **Q.** Okay. So have you worked for any other
 19 entity besides Northern since high school?
 20 **A.** In high school I worked at a grocery
 21 store, but I guess that would be it. And I guess,
 22 yes, that would be in high school, so I worked at a
 23 grocery store.
 24 **Q.** Okay. But otherwise your entire
 25 employment --

1 A. Mm-hmm.
 2 Q. -- history has been at Northern
 3 Bottling --
 4 A. That's correct.
 5 Q. -- is that right?
 6 A. That's correct.
 7 Q. Okay. Now, looking again at Exhibit 1, it
 8 indicates that as of July 2014 you became a
 9 franchise manager at Northern Bottling; is that
 10 right?
 11 A. Mm-hmm. I'm sorry.
 12 Q. You've got to say yes or no.
 13 A. You're correct.
 14 Q. Was that a promotion?
 15 A. Yes, it was.
 16 Q. Okay. Can you tell us how your duties and
 17 responsibilities at Northern changed as a result of
 18 that promotion?
 19 A. I'm doing some of the same things I did as
 20 a territory manager, but we're trying to leverage
 21 them out to our other divisions in Dickinson and in
 22 Devils Lake. So we're taking some of the things
 23 we've learned in our Minot territory and pushing
 24 them forward into our other divisions.
 25 Q. Okay. Let's start first with what's the

18

1 geographic scope of your responsibilities now as
 2 franchise manager?
 3 A. I cover the Minot territory, the Dickinson
 4 territory and the Devils Lake territory.
 5 Q. Now, in your LinkedIn profile, which is
 6 Exhibit -- Exhibit 1, you have a paragraph that
 7 describes your duties and responsibilities; is that
 8 correct?
 9 A. That's correct.
 10 Q. Okay. Well, I'd like to ask you some
 11 questions about that paragraph. And -- and first
 12 of all, let me just ask you this: Does this
 13 paragraph accurately summarize what your duties and
 14 responsibilities has -- have been since you became
 15 the franchise manager in July 2014?
 16 A. This paragraph is the first paragraph of
 17 our job description and performance evaluation. I
 18 did write this paragraph, and I would say it
 19 accurately sums up the scope of what I do.
 20 Q. Okay. I'm sorry. You -- you -- you wrote
 21 this paragraph?
 22 A. Yes.
 23 Q. Okay.
 24 A. I wrote the majority of our job
 25 descriptions.

1 Q. Okay. Okay. So in the -- the first
 2 sentence it states, "Primarily responsible for the
 3 development, communication, and execution of sales
 4 goals, pricing and marketing strategies, and other
 5 programs which exceed the expectation of customers
 6 and meet company goals."
 7 Doesn't -- that's what it says?
 8 A. That's correct.
 9 Q. Okay. Could you tell us how you go about
 10 setting sales goals, pricing and marketing
 11 strategies?
 12 A. Sales goals are usually set with historic
 13 data, you know, what are trends and what are
 14 projections for that year.
 15 Q. Well, let's just stop there for a second.
 16 How do you use historic data in order to set your
 17 goals? Let's take -- you started in this job in
 18 2014; is that correct?
 19 A. That's correct.
 20 Q. So with respect to 2015, you had
 21 responsibility to develop sales goals?
 22 A. Mm-hmm.
 23 Q. Okay. Yes?
 24 A. Yes.
 25 Q. Okay. So tell us what the process is that

20

1 you used in connection with setting those sales
 2 goals.
 3 A. We use an internal reporting program
 4 called Salient UXT®.
 5 Q. I'm sorry. Would you -- if you could just
 6 raise your voice a little bit and maybe speak a
 7 little bit slower.
 8 A. We use an internal reporting program
 9 called Salient UXT®, and that keeps all of our
 10 sales data. So we look at that sales data and we
 11 look at current market trends. So if we're
 12 trending plus 5 percent for a particular product,
 13 we may set that goal at plus 7 percent to try to
 14 get that extra 2 percent or give our salesmen a
 15 push to reach their potential.
 16 Q. What if the -- the sales to a particular
 17 customer are going in the opposite direction?
 18 A. Then we make adjustments for that
 19 direction. So if there was a negative 7 trend, we
 20 would push for a negative 5 trend.
 21 Q. Okay. So, in other words, to try to -- to
 22 arrest or slow down the -- the decline in sales?
 23 A. That's correct.
 24 Q. Okay. Is there any rule of thumb that
 25 you've used in terms of setting sales goals about

1 how much of an increase you want to shoot for or --
2 or how little a decrease you want to -- to
3 encounter?

4 **A.** No, not that I'm aware of.

5 **Q.** So how do you decide whether it's
6 1 percent, 2 percent, 3 percent increase for a
7 particular customer?

8 **A.** A particular customer?

9 **Q.** Yes.

10 **A.** We would look at that customer. Some of
11 it's geographical. If there is a lot of activity
12 in their geographic area, you know, western North
13 Dakota and their trends were going at a rapid rate,
14 you know, we try to adjust for that rate. If there
15 is a particular product that we believed would go
16 well in that area, you know, we'd try to adjust for
17 what we believe that product would sell, but a lot
18 of it's just guessing.

19 **Q.** And -- and is there an aspirational
20 component to setting the goals too?

21 **A.** Could you define aspirational?

22 **Q.** Yeah. In other words, do you -- you try
23 to reach for a little more than you think you might
24 be able to att -- to -- to achieve in order to --
25 to motivate your sales force to do even a little

22

1 bit better?

2 **A.** That is one of the tactics we use, yes.

3 **Q.** Okay. Now, how about with respect to
4 pricing? What -- how do you go about setting
5 pricing for Northern Bottling's products that you
6 have responsibility for?

7 **A.** We have a floor cost from our
8 manufacturer, and we look at what Pepsi is
9 suggesting their suggested retail price and we see
10 where that would put our margin for the product,
11 and we kind of set it based on some of the things
12 that Pepsi is telling us as far as movement for
13 that product.

14 **Q.** What do you mean by that last phrase?

15 **A.** As far as movement for that product?

16 **Q.** Yes.

17 **A.** Volume estimates.

18 **Q.** That you get from Pepsi?

19 **A.** Yes.

20 **Q.** Okay. And when we say Pepsi, just so the
21 record is clear on this, we're referring to
22 Pepsico, Inc.?

23 **A.** Pepsico or Pepsi Bottling Company --

24 **Q.** Right.

25 **A.** -- or Beverage Company.

1 **Q.** Okay. And -- and with respect to
2 marketing strategies, how do you go about
3 developing marketing strategies?

4 **A.** A lot of our marketing strategies come
5 from Pepsico or -- or PBC. They're developing the
6 strategy at a high level and we're trying to form
7 it to fit to our local market, so we use a lot of
8 what they give to us. Some of it's local
9 marketing. If it's a local restaurant or local
10 event, we try to tailor it to their particular
11 needs, but a lot of it's what the customer is
12 asking of us and what we can try to do for them.

13 **Q.** Do you have any kind of program for
14 collecting data or information from customers about
15 what it is that they would like to see in
16 marketing?

17 **A.** I don't think we have a program. We have
18 a couple pre-call reports and -- and it's
19 responsible for the salesperson to fill those out
20 and they identify some objectives of the customer,
21 what they'd like to do.

22 **Q.** Is there any other program -- the first
23 sentence refers to other programs. Besides the
24 sales goals, pricing and marketing strategies, what
25 other programs do you have responsibility for

24

1 developing and communicating and executing?

2 **A.** Our local selling programs, our customer
3 development agreements, our local customer
4 development agreements. You know, that's really
5 all I recollect right now.

6 **Q.** Okay. Now, your -- your franchise manager
7 job description also says, "Also responsible for
8 working with internal customers to identify
9 opportunities for improving processes which add
10 value to all customers."

11 Do you see that second line?

12 **A.** Mm-hmm.

13 **Q.** First of all, can you tell us what you
14 mean by the phrase internal customers?

15 **A.** Internal customers for us are our fellow
16 employees, our staff.

17 **Q.** And how about opportunities for improving
18 processes? Can you give us some examples of
19 opportunities that you've been able to identify
20 over the last two years?

21 **A.** Efficiency measures. You know, how do we
22 get better at doing a particular thing, either in
23 regards to operation or sales or communication.

24 **Q.** How about with respect to customer
25 service, have you developed any techniques or

1 processes to improve customer service?

2 **A.** I wouldn't say any particular program that

3 was specifically targeted at that.

4 **Q.** Is there anything that you can identify,

5 Mr. Hillestad, that you've done in the last two

6 years since you became franchise manager? Any

7 initiative or program that you've begun to try to

8 improve customer service?

9 **A.** We do a lot of one-on-one training with

10 our sales reps and our employees, and that's one of

11 the things we stress in our one-on-one training is

12 customer service, you know, trying to do what the

13 customer asks of us within the boundaries of our

14 capabilities.

15 **Q.** Can you identify for us some of the

16 particular issues that you've had to address in

17 order to make sure that Northern's sale -- sales

18 reps and other individuals who interface with

19 customers are able to improve their service?

20 **A.** I'm not quite sure I understand that

21 question.

22 **Q.** Okay. Let me break it. That was a long

23 one. Since you've been franchise manager, have you

24 identified any particular aspect of the whole

25 customer service component of -- of Northern's

1 **Q.** Okay.

2 **A.** -- that I can recollect.

3 **Q.** Is that an issue that -- that in your

4 position as franchise manager that -- that has come

5 to your attention at all during the last two years?

6 **A.** That would most likely be handled by the

7 direct supervisor, any out-of-stock issue or an

8 out-of-date issue, those two particular things.

9 **Q.** Okay. When you're saying handled by

10 direct supervisors, to whom are you referring?

11 **A.** Sales supervisor or a sales manager, a

12 delivery supervisor.

13 **Q.** Getting back to your job description as

14 franchise manager, the third sentence states that

15 you're responsible for developing and enhancing the

16 relationship with franchise companies to further

17 contribute to the company's goals and influence

18 franchise companies customer, brand and package

19 strategies. Do you see that?

20 **A.** I do.

21 **Q.** Okay. Can you tell us what you've done in

22 that regard.

23 **A.** So in that regards I work with our -- it

24 would be our franchise development manager from

25 Pepsico. When they come out with programs, we work

26

28

1 relationship with its customers that -- that you've

2 thought needed to be improved?

3 **A.** Are you asking if I've seen any

4 shortfalls --

5 **Q.** Right.

6 **A.** -- between our sales reps and our

7 customers?

8 **Q.** Right.

9 **A.** There's been some conflicts -- you know,

10 personality conflicts with some of our sales reps

11 and customers, but that would be about the extent

12 to it. You know, sometimes everybody doesn't get

13 along.

14 **Q.** How about besides the personality

15 conflicts, any instances at all over the last

16 couple of years where you've identified -- where

17 customers have complained about service?

18 **A.** Yes. There's been customers that maybe

19 want an extra delivery or better pricing and we

20 have to explain why we're either able or unable to

21 give them more deliveries or better pricing.

22 **Q.** Have you had to deal with complaints

23 relating to product placement or out-of-date stock

24 or issues like that?

25 **A.** I personally have not --

1 with the funding levels, we work with the programs,

2 we look at what they want to do and how we can fit

3 into that. And the same with our other companies

4 we distribute with, our DPSG rep, our Wis-Pak rep,

5 our Rockstar rep.

6 **Q.** And for Pepsi is the franchise manager

7 Larry Bowers?

8 **A.** That's correct.

9 **Q.** Okay. And so that's -- he's the person

10 that you deal with in terms of your efforts to

11 develop and enhance the relationship with Pepsi?

12 **A.** The majority of the time, yes.

13 **Q.** How would you describe your relationship

14 with Mr. Bowers?

15 **A.** I think we have a good working

16 relationship.

17 **Q.** Do you communicate regularly with him?

18 **A.** We do.

19 **Q.** Okay. And during the time that you've

20 worked with him, has everything been professional

21 and supportive?

22 **A.** Yes, I believe Larry's a very professional

23 person.

24 **Q.** And supportive as well?

25 **A.** Do you want to define supportive?

1 Q. Yeah. I mean does -- does -- when you
2 have questions or requests of Mr. Bowers, is he
3 able to get answers to your questions and to
4 provide support for your development initiatives
5 with customers?
6 A. I believe he does the best he can. You
7 know, there are times he can't get us direct
8 answers.
9 Q. Okay. Are you pretty satisfied with
10 the -- the -- Mr. Bowers' performance in connection
11 with responding to your requests or questions or
12 issues?
13 A. I'm personally satisfied with his --
14 Q. Okay.
15 A. -- performance.
16 Q. You say personally. Do -- do you believe
17 that -- that he treats Northern Bottling, the
18 company, in a professional and in a responsive way?
19 A. Well, I can't speak for what are other
20 people's interactions --
21 Q. Right.
22 A. -- with him, but to what I see, you know,
23 he's always been a -- been a very professional
24 person.
25 Q. Good.

30

1 Have you had any dealings with other Pepsi
2 employees, Mr. Bowers' supervisors or others in the
3 Pepsi organization?
4 A. Well, occasionally talk to Paul Neari,
5 who -- I'm not sure exactly how their
6 organizational charts work, but I believe he's one
7 of Mr. Bowers' reportings. We work through Peter
8 Tidona, who works in the food service of Pepsico or
9 PBC. We -- they -- their marketing people we'll
10 talk to, Sharon Smith, depending on what kind of
11 question we have.
12 Q. And how would you describe your
13 interactions with all of those people?
14 A. I think they're very positive and
15 professional.
16 Q. And supportive as well?
17 A. I would say supportive, yes.
18 Q. Then getting back to your -- your job
19 description, the next sentence you write, "Primary
20 job duties generally fall into the following
21 categories: Development and communication of
22 sales, pricing and marketing strategies and
23 programs."
24 Now, we talked a few minutes ago about
25 that issue. Is there anything else with respect to

1 that aspect of your job that -- that you do that
2 you haven't already testified to us about?
3 A. I don't believe so.
4 Q. Okay. So the second point is, "Oversight
5 of quality execution by the field sales force of
6 all sales strategies to attain sales and profit
7 goals."

8 Do you see that?

9 A. I do.

10 Q. So what do you do as part of your
11 oversight function with respect to the field sales
12 force to make sure that they are following the
13 sales strategies to attain the goals and profits?
14 A. I work with the divisional sales managers
15 and sales supervisors. We have a score-carding
16 program for certain channels of our business that
17 we adhere to as best practices. It's -- it's a
18 form of execution matrix. A lot of it is
19 communication back and forth, making sure programs
20 are being executed, that we're making sure we're
21 working with the rest of our staff, you know,
22 training, developing them as we should.

23 Q. Can you tell us a little bit about this
24 score-carding program.

25 A. The score-carding program is a --

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1 essentially almost a checklist and we have it for
2 small format. We haven't really developed it
3 beyond then, but it goes into a store and it looks
4 for certain things like price points, adhering to
5 cold-vault sets, making sure the delivery people
6 are doing what they need to, picking up shelves,
7 things -- POS, programs.
8 Q. I'm sorry. What was POS?
9 A. POS, yeah.
10 Q. Point of sale?
11 A. Point of sale, yes.
12 Q. Okay. And what else? I didn't mean to
13 interrupt you there.
14 A. Without seeing it, I can't go over
15 everything. I think there's I want to say 70 to 80
16 different checkmarks on there, so I don't have it
17 memorized, but --
18 Q. Is there a score card for each of
19 Enerba -- rather of Northern Bottling's customers?
20 A. They are not determined. They're
21 determined by their supervisor who's doing the
22 score card, so they randomly pick customers. So
23 one customer, there may not be a score card every
24 trimester or every week. It's just randomly
25 picked.

1 Q. How is that data maintained, the score
2 card results that is?
3 A. Score card results?
4 Q. Yes.
5 A. We have a summary sheet of the score card
6 results, and that usually gets placed into an
7 employee's file when we pay them their allocation
8 of bonus. I think it's attached to that.
9 Q. So just so I'm clear about this, the score
10 card is filled out with respect to a customer, is
11 that right, or is it with respect to an employee?
12 A. It is a matrix we use to gauge our
13 employees' responsibility level at the customer.
14 What are they doing based on our company goals?
15 Q. So it's for an employee and the score card
16 may be broken -- if -- if an employee, for
17 example -- strike that. Let me just make it clean.
18 If -- if an employee who's let's say a
19 sales rep serves two or three customers, will there
20 be a score card for that employee with respect to
21 each of the customers he or she serves?
22 A. It's all on the discretion of their
23 supervisor if they choose to do one of those three
24 customers or two of those three customers or three
25 of those three customers.

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1 Q. Okay. And then when the score card is
2 completed, it's put in the employee's personnel
3 file?
4 A. The summary report is put into their
5 personnel file.
6 Q. Okay. What is the difference then between
7 a summary report and a score card?
8 A. A score card is the actual -- it's a
9 written document, the -- the checkmark document.
10 The scores from that get summarized onto a summary
11 document that has to be signed off by our
12 controller, our general manager for those bonus
13 funds to be released.
14 Q. Okay. What happens to the score card
15 sheets after information is incorporated into a
16 summary document?
17 A. We give one to that particular salesperson
18 to improve on anything that we maybe saw lacking,
19 and then one is usually kept by the supervisor.
20 Q. So if we wanted to get score cards
21 relating to service to a particular customer, how
22 could one find that information at Northern
23 Bottling looking back over the last couple of
24 years, for example?
25 A. We'd have to ask the supervisors to check

1 their files. Some are better than others at
2 keeping them.
3 Q. Okay. Is that information recorded
4 electronically anywhere at Northern?
5 A. Some are electronic, some are on paper.
6 Q. Okay. Is there any policy that you're
7 aware of about retaining that information for a
8 period of time?
9 A. No, there's no policy.
10 Q. Okay. But it's used to determine the
11 bonus that an employee will get?
12 A. They have an allocation of their
13 compensation program that is allocated to the
14 executional program, score-carding program. So if
15 they have a thousand dollars and they do ten score
16 cards, each score card would be worth a hundred
17 dollars, so that's how the allocation is broke
18 down.
19 Q. Okay. Do you know whether there are --
20 there have been score cards that have been compiled
21 for Northern's convenience and gas customers in the
22 Minot region?
23 A. Could you define that, please?
24 Q. Sure. Your Minot region you talked about
25 earlier, that --

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1 A. Mm-hmm.
2 Q. And let's start there maybe just so the
3 record is clear. The Minot region covers what
4 geographic area?
5 A. It's the -- south is Max, is -- east is
6 Drake, west is Stanley and north is the Canadian
7 border.
8 Q. Okay. So it at least includes all of the
9 city of Minot and the surrounding area?
10 A. That's correct.
11 Q. Okay. So you have convenience and gas
12 customers in that -- that Minot region; right?
13 A. That's correct.
14 Q. My question is did Northern compile score
15 cards for sales reps or other employees who served
16 convenience and gas customers within that Minot
17 region?
18 A. Yes, we do.
19 Q. Okay. And those cards, if they still
20 exist, would be in an employee's file or a
21 supervisor's file or someone else like that?
22 A. The summary report would be in the
23 employee file if they got paid out their allocation
24 of their trimester bonus, and it's up to the
25 supervisor's discretion to file the actual score

1 cards away in their filing.
 2 Q. Okay. What information is on the summary
 3 report?
 4 A. It has a breakdown of which accounts have
 5 been surveyed, their customer name, their customer
 6 number, what their score was, if it was a
 7 pass/fail, and the amount allocated to that score
 8 card.
 9 Q. Number three on -- on your primary job
 10 duties in the -- as a franchise manager states,
 11 "Development of the sales and marketing team."
 12 Can you tell us what you have done in that
 13 regard.
 14 A. That is development of their professional
 15 skills. So we do a lot of online training, we do a
 16 lot of one-on-one training. If there's situational
 17 training where they have any issues with something,
 18 they can go to their supervisor and do some one-on
 19 training with that.
 20 Q. Do you use the score card data to identify
 21 areas where a particular employee may need to
 22 improve his or her performance?
 23 A. With the sales rep we do.
 24 Q. You know, I skipped over number 2,
 25 "Oversight of quality execution by the field sales

1 for -- floor cost, would you otherwise agree that
 2 quality execution is meeting a customer's needs for
 3 promotional materials, product supply, product
 4 replenishment in the stores?
 5 A. Quality execution to my particular self is
 6 working with the customer as best we can to meet
 7 their needs.
 8 Q. Okay. The -- the last item that you list
 9 among your primary job duties is, "Development of
 10 departments, key performance indicators."
 11 What do you mean by that?
 12 A. We have not done much on key performance
 13 indicators. That is one of our goals of we want
 14 certain matrix to track the success of certain
 15 programs. We have some in our warehouse department
 16 that was developed by our controller, but as far as
 17 we get into the sales side, we haven't been able to
 18 quantify really the data that we're looking for to
 19 establish those.
 20 Q. So that hasn't been done yet. That's one
 21 of the things you've got on your agenda?
 22 A. Yep. That's one of the things we'd like
 23 to accomplish.
 24 Q. Okay. What do you have in mind in terms
 25 of what you want to set as a key performance

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1 force of all sales strategies." Maybe I didn't.
 2 I -- I think I did read this, so I apologize. Let
 3 me just strike that.
 4 I did have one follow-up question. What
 5 would you -- what do you consider to be the
 6 elements of quality execution?
 7 A. Elements of quality execution is really
 8 doing the right things at the right times to impact
 9 our consumers of our products.
 10 Q. Can you give us some examples of what a
 11 quality execution would be?
 12 A. Having a price point on the package,
 13 having the associated program with that package so
 14 when the consumer is there, that it's available to
 15 purchase and they know what they're purchasing.
 16 Q. Is quality execution also a matter of
 17 making sure that -- that Northern meets its
 18 customers' needs and requirements?
 19 A. I would agree within the boundaries of our
 20 capabilities.
 21 Q. What do you mean by that?
 22 A. If a customer asks for pricing below our
 23 floor cost, I don't -- I could not give that
 24 pricing to them below our floor cost.
 25 Q. Okay. Leaving aside pricing below your

1 indicator?
 2 A. Well, I think one of the key performance
 3 indicators would be our executional programs, what
 4 do we score on our score cards, what do we believe
 5 our market is doing based on the data that we can
 6 retrieve, what are our program success rates, fail
 7 rates. Off the top of my head, those are some
 8 things I can remember.
 9 Q. Mr. Hillestad, I'd like to hand you what's
 10 been marked as Hillestad Deposition Exhibit 2 now
 11 and ask you to take a look at that. This Exhibit 2
 12 has Bates stamp numbers 000709 through 0000714.
 13 Looking at the first page, do you recognize this as
 14 a true and correct copy of Northern Bottling
 15 Company's organizational chart as of May 5, 2016?
 16 A. It looks correct.
 17 Q. Okay. And I apologize for the -- this is
 18 the way it was produced, so if you need to hold it
 19 up in order to be able to see any of the names or
 20 answer any questions for me, please do that. First
 21 of all, you are shown on the left as franchise
 22 manager; correct?
 23 A. That's correct.
 24 Q. Okay. Beneath you there are three names,
 25 Dan Leach, Alex Richards, Kerri Mattern. Can you

1 tell us what each of their responsibilities are?

2 **A.** Dan Leach is our operational supervisor in

3 Devils Lake. He oversees the day-to-day operations

4 of that division. Alex Richards is our territory

5 development rep. She's in charge of gaining us new

6 business and our on-premise channels. And Kerri

7 Mattern is what we call a marketing manager, and

8 she does a lot of our data analysis and

9 communication of programs throughout the company.

10 **Q.** And at the level on the organizational

11 chart where you are, there are also the names Troy

12 Brezden, Harold Potthast and Kristi Swearingen. Do

13 you see that?

14 **A.** I do.

15 **Q.** Troy Brezden's title is sales manager,

16 Minot. Do you see that?

17 **A.** I do.

18 **Q.** Could you explain for us the difference in

19 duties and job responsibilities between yours and

20 those of Mr. Brezden?

21 **A.** Mr. Brezden directly oversees the Minot

22 supervisors, and I work with Mr. Brezden to -- with

23 the programs of the company.

24 **Q.** Do -- do either one of you supervise the

25 other?

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1 **A.** No.

2 **Q.** Okay. So Mr. Brezden's territory is

3 narrower geographically than yours; is that right?

4 **A.** Mr. Brezden's territory is the Minot

5 territory. I work within all the territories with

6 all the sales managers.

7 **Q.** Okay. Now, underneath you there is --

8 actually it's -- it looks like it's underneath

9 Mr. Leach, there's a sales department, and I

10 believe if you look at page 713, 0000713, it -- it

11 shows people in the sales department?

12 **A.** I don't believe I have that page. I have

13 through 711.

14 **Q.** Okay. I'm sorry. Well, I apologize. I

15 thought I had the additional pages. Let me see if

16 I -- yeah. The exhibit is only through 711, so I'm

17 going to have to ask you to -- to remember it if

18 you can. I have some names that maybe I can help

19 you in that regard. In -- in the sales department

20 under Mr. Leach, are there Joey Armey, Matt Person

21 and Jason Wittmayer?

22 **A.** Joey Armey is no longer with the company,

23 but the other two are.

24 **Q.** Okay. Now, do any people in the sales

25 department reporting to Mr. Leach have

1 responsibility for the Minot portion of the

2 territory?

3 **A.** They do not.

4 **Q.** Okay. So those are all underneath

5 Mr. Brezden?

6 **A.** Those particular two names are underneath

7 Mr. Leach --

8 **Q.** Yeah.

9 **A.** -- in the Devils Lake territory.

10 **Q.** Yeah. You're right. I was not clear. I

11 should rephrase the question.

12 Underneath Mr. Brezden, there is a sales

13 supervisor named Tammy Smith; is that correct?

14 **A.** That's correct.

15 **Q.** And she supervises several people in a

16 sales department. Would that be Chris Bachar,

17 Brock Francis, Paul Kinney and Garrett Common?

18 **A.** I believe that's her direct reports right

19 now.

20 **Q.** Okay. And those -- are those -- are any

21 of those salespeople responsible for the Minot --

22 **A.** They are.

23 **Q.** -- area?

24 Okay. Which ones?

25 **A.** Can you read the names again?

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1 **Q.** Sure. Chris Bachar, Brock Francis, Paul

2 Kinney, Garrett Commons.

3 **A.** All three but Paul have accounts within

4 the Minot city limits.

5 **Q.** Okay. Which of those individuals has

6 responsibility for the Enerbase account?

7 **A.** I believe right now Brock Francis is

8 servicing all the Enerbase accounts.

9 **Q.** Okay. And he reports to Tammy Smith?

10 **A.** That's correct.

11 **Q.** Who reports to Troy Brezden?

12 **A.** That's correct.

13 **Q.** Okay. And you report to Bruce Peterson

14 and Mr. Langer Gokey and Mr. Will Gokey?

15 **A.** I report to Bruce Peterson, and through

16 extension, Langer and Will.

17 **Q.** I see. So your direct report is --

18 **A.** Bruce Peterson.

19 **Q.** -- Mr. Peterson.

20 Do you have any regular interaction with

21 either Mr. Langer Gokey or -- or Mr. Will Gokey in

22 connection with performing your job

23 responsibilities?

24 **A.** Can you define regular?

25 **Q.** Daily.

1 **A.** I wouldn't say daily. You know, about
2 once a week Mr. Will Gokey and I will speak.
3 Langer and I will speak when he's available or in
4 town.

5 **Q.** Okay. How frequently is that over the
6 course of the last year or so?

7 **A.** I couldn't tell you.

8 **Q.** So just so I'm clear, how do you and --
9 and Mr. Brezden define -- divide responsibilities
10 with respect to customer development?

11 **A.** I handle a lot of our chain accounts. So
12 in our classification if there's three or more
13 outlets, it becomes a chain account. So if they
14 become a chain account, I'll handle all the sales
15 on that particular chain account.

16 **Q.** Including chain accounts in Minot?

17 **A.** That's correct.

18 **Q.** Okay. Has that always been the division
19 of responsibility since you became franchise
20 manager?

21 **A.** No.

22 **Q.** Okay. When did that change take place?

23 **A.** I had some chain accounts when I was a
24 territory manager and I've taken on some more since
25 becoming franchise manager.

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1 **Q.** Which chain accounts did you have when you
2 were territory manager?

3 **A.** I handled our national chains, Loaf 'N
4 Jug; Kum & Go; Pilot Flying J; local chain,
5 Superpumper. That's what I can recollect off the
6 top of my head.

7 **Q.** Mm-hmm. And when did you take on
8 additional chains?

9 **A.** I took on the Enerbase accounts I believe
10 sometime towards the end of 2014.

11 **Q.** Did you take on any other chains at that
12 time?

13 **A.** I don't believe so.

14 **Q.** What was the reason for your taking on the
15 Enerbase account?

16 **A.** From my recollection, there was primarily
17 two. One was that I was handling the other chain
18 business and I could help them with the programs,
19 interpret them better, and two is we assigned Troy
20 into a warehouse project that was taking a lot of
21 his time.

22 **Q.** Did Mr. Brezden continue to handle any
23 chain accounts after that transfer?

24 **A.** He has interaction with all the accounts
25 in his geographical territory. When I say I -- I

1 handle parts of the chain accounts, it may be their
2 pricing, it may be their primary point in contact,
3 it may be to develop programs. But I work with all
4 sales supervisors and managers for the chains.

5 **Q.** Was -- was Mr. Brezden also removed from
6 the Enerbase account because of a personality
7 conflict?

8 **A.** Mr. Brezden and at that time the district
9 manager, you know, I personally felt that they were
10 not getting along.

11 **Q.** Who was the district manager for Enerbase
12 then?

13 **A.** At that point it was Shawna Chilcoat.

14 **Q.** That's C-h-i-l-c-o-a-t?

15 **A.** I couldn't tell you how to spell it off
16 the top of my head.

17 **Q.** I think that is. We'll probably get to
18 some documents later that may show.

19 What caused you to feel that Mr. Brezden
20 was not getting along with Ms. Chilcoat?

21 **A.** Some of the comments that she made in
22 passing when I've talked to her.

23 **Q.** Can you tell us what those comments were.

24 **A.** There was one incident that I remember
25 where they weren't happy. They had a reset that

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1 was a real short notice and we couldn't produce
2 glides for their reset. We didn't have them in
3 stock.

4 **Q.** Okay. So we're going to have to explain a
5 few terms for those who may or may not understand
6 it. What is a reset?

7 **A.** A reset is when we adjust the shelves in a
8 cold vault.

9 **Q.** So that maybe a shelf is going to have
10 more or less space to hold product?

11 **A.** Sure.

12 **Q.** Could it be like a vertical as well as a
13 horizontal reset?

14 **A.** I don't see how, but --

15 **Q.** Mostly it's going to move the shelves up
16 and down, in other words?

17 **A.** Yes.

18 **Q.** Okay. And what's a glide?

19 **A.** A glide is what the product slides on that
20 holds it in place.

21 **Q.** Okay. So it may be a little --

22 **A.** So it's like a plastic retainer.

23 **Q.** Right. And it may have walls on the side
24 in order to keep the product standing up straight,
25 for example?

1 A. That's correct.
 2 Q. Okay. So getting to this incident
 3 where -- this conversation that you had with
 4 Ms. Chilcoat, when did that take place?
 5 A. I couldn't tell you off the top of my
 6 head.
 7 Q. Was it sometime in December of 2014?
 8 A. I'm not sure.
 9 Q. Was it near the beginning of the time that
 10 you were having -- taking over responsibility
 11 for --
 12 A. I believe --
 13 Q. -- Enerbase?
 14 A. -- it was previous to that.
 15 Q. Prior to that time?
 16 A. Yes.
 17 Q. Okay. And what did she say to you that --
 18 that caused you to think that she was not getting
 19 along well with Mr. Brezden?
 20 A. I can't recall the exact words.
 21 Q. What's your best recollection of -- of
 22 the -- the gist of the conversation?
 23 A. That they were unhappy or she was unhappy
 24 that we couldn't provide the glides in their time
 25 frame.

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1 Q. Do you recall what the time frame was?
 2 A. Again, I can't be sure, but I think it was
 3 about a week's notice.
 4 Q. Okay. And -- and you perceived
 5 Ms. Chilcoat to be particularly angry at
 6 Mr. Brezden?
 7 A. I personally wouldn't say particularly
 8 angry. Maybe venting or something of that manner.
 9 Q. But she was mad enough that you thought it
 10 made sense to replace Mr. Brezden as the
 11 relationship manager with Enerbase?
 12 A. I thought it made sense based on the tasks
 13 we were asking Mr. Brezden to do and my previous
 14 experience with chain accounts.
 15 Q. Okay. But you also recognized that this
 16 friction between Ms. Chilcoat and Mr. Brezden could
 17 harm Northern Bottling's efforts to sell product to
 18 Enerbase; right?
 19 MR. RAGAIN: Object to the form. Go
 20 ahead.
 21 THE WITNESS: I think there's friction
 22 between most customers and salespeople. You know,
 23 to gauge the severity of that friction, I don't
 24 think I'm really qualified for that.
 25 Q. (MR. QUINN CONTINUING) Yeah, but you

1 don't replace somebody every time there's friction
 2 with a customer; right?
 3 A. Not usually, no.
 4 Q. But in this case the friction was serious
 5 enough that it made sense in your mind to take over
 6 responsibility for the Enerbase relationship and to
 7 take Mr. Brezden out of that; right?
 8 A. Well, I don't know if it -- I would
 9 classify it serious enough. It -- it lined with
 10 other goals we had that we were trying to
 11 accomplish in the company --
 12 Q. Right.
 13 A. -- so it was a -- it was an easier
 14 transition point.
 15 Q. But the friction between Ms. Chilcoat and
 16 Mr. Brezden was a factor in your decision to move
 17 him out of that relationship; right?
 18 A. I personally didn't have the authority to
 19 move him out of that relationship. But I'm sure I
 20 brought it up to Bruce -- or Mr. Peterson at one
 21 point.
 22 Q. Right. And as a result of your bringing
 23 that to their attention, Mr. Brezden ultimately was
 24 removed from the relationship; isn't that correct?
 25 A. I can't speak to what they were thinking,

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1 I guess.
 2 Q. Well, you brought it to their attention
 3 and after you brought it to their attention,
 4 Mr. Brezden was removed from the relationship;
 5 right?
 6 MR. RAGAIN: Object to the form. Go
 7 ahead.
 8 THE WITNESS: We brought that along with
 9 other issues to their attention and it was decided
 10 at Mr. Peterson's level to make the change at that
 11 time.
 12 Q. (MR. QUINN CONTINUING) Okay. So I just
 13 want to make sure I understand the sequence. You
 14 brought it to their attention, this issue of
 15 friction --
 16 A. Mm-hmm.
 17 Q. -- with Ms. Chilcoat, and thereafter
 18 Mr. Brezden was out of the relationship. Is that
 19 sequence correct?
 20 A. I would say that sequence is correct. I
 21 wouldn't say he was out of the relationship. He's
 22 still head of the Minot division, so we'd never
 23 remove him from any relationship or tell him he
 24 can't go in a particular store or speak to a
 25 particular customer. He still has oversight of

1 that division, so --

2 Q. But he no longer has primary
3 responsibility for the Enerbase relationship?

4 A. No. That was passed on to me.

5 Q. Right. So my -- my statement is a correct
6 one; right?

7 A. Could you --

8 Q. Well, let's just -- so as -- as a result
9 today, let's just put it this way or -- strike
10 that.

11 Since approximately December of 2014,
12 Mr. Brezden has no longer had primary
13 responsibility for the Enerbase relationship; isn't
14 that right?

15 A. I'd say that's correct.

16 MR. QUINN: Okay. Let's take a break.

17 THE VIDEOGRAPHER: This is the end of tape
18 one. We're going off the record at 10:10.

19 (Recessed at 10:10 a.m. and reconvened at
20 10:21 a.m.)

21 THE VIDEOGRAPHER: We are back on the
22 record at 10:21.

23 MR. QUINN: Yes. What I'd like to do
24 before we go any further is just to correct the
25 designation that I made of Exhibit 2, the

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1 organization charts. It actually only includes
2 three pages, with Bates numbers 0000709 through
3 0000711, so it's a three-page exhibit.

4 Q. (MR. QUINN CONTINUING) So, Mr. Hillestad,
5 I'd like to ask you now some questions generally
6 about the convenience and gas channel in Northern
7 Bottling's territories. Are there different size
8 customers in that channel, that C&G channel?

9 A. Are you referring to square footage or
10 volume or --

11 Q. Size of business.

12 A. Can you define size?

13 Q. Well, for example, I think you mentioned
14 in our first session that Pilot, for example, was a
15 larger convenience and gas chain.

16 A. Mm-hmm.

17 Q. What I'm trying to get a sense of is the
18 range of convenience and gas customers in terms of
19 revenue, size of business, size of company.

20 A. In your example, Pilot, they're referred
21 to as large because of their number of outlets --

22 Q. Yes.

23 A. -- throughout the country, if that's what
24 you're referring to.

25 Q. Right. So could you tell us about the --

1 let's just focus on the Minot market for now -- the
2 different size of convenience and gas customers
3 that Northern has in that market.

4 A. We have anywhere from single-store
5 operators who own one store or a multiple chain
6 that might own six stores.

7 Q. And do these large national chains also do
8 business in that Minot market area?

9 A. They do.

10 Q. Okay. Which ones?

11 A. Loaf 'N Jug, Pilot Flying J, Kum & Go is
12 what I remember off the top of my head.

13 Q. Okay. Now, in connection with your work
14 as a territory manager and then as a franchise
15 manager, have you had occasion to -- to study the
16 C&G channel in the marketplace?

17 A. Can you define study?

18 Q. Well, just kind of observe it, form some
19 conclusions about the -- the way in which the
20 market operates.

21 A. I would say I do.

22 Q. Okay. How -- how do these larger chains
23 impact the business of the smaller chains within
24 that market?

25 A. They tend to be a bit more aggressive than

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1 the smaller chains on, you know, pricing, their
2 profitability model, their operations, their
3 resources.

4 Q. Mm-hmm. So do they drive the pricing in
5 the marketplace or -- or not?

6 A. I would say they're one of the factors.

7 Q. Okay. How about big-box stores? I think
8 you mentioned earlier Walmart®, Target, Kmart.
9 Do -- do -- and we're talking now, obviously, about
10 beverage product sales, not some other sales. But
11 with that qualification, do big-box stores and
12 their pricing policies and their sales and
13 marketing policies have an impact on the sales of
14 beverage products in convenience and gas outlets?

15 A. I would say they're a factor also.

16 Q. How so?

17 A. If a particular big-box store sells a
18 package for what the market perceives as cheap or
19 under their cost, it affects the rest of the market
20 trying to get down to that particular price.

21 Q. So, in other words, if a big-box store has
22 a promotion and -- and -- and lower pricing, that
23 may create pricing pressure on the convenience and
24 gas stores within the same marketplace?

25 A. It could based on the package.

1 Q. What do you mean by that?

2 A. The convenience and gas primary package is

3 a 20-ounce bottle. When you get to the big-box

4 stores, their primary package is a take-home

5 package; a 24-pack, a 12-pack, a half-liter 6-pack.

6 Q. So the customer that -- that will

7 typically buy from a -- a C&G outlet is going to go

8 for a single -- single serving as opposed to buying

9 a -- like you said, either a 24-pack or a 12-pack

10 or whatever you might normally get in a grocery

11 store or a big-box store?

12 A. The C&G has a higher mix of single-serve

13 bottles, yes.

14 Q. Okay. Now, in connection with your work

15 as a franchise manager, have you had occasion to

16 become involved in putting together Northern

17 Bottling's customer development agreements for the

18 C&G channel?

19 A. I have.

20 Q. Okay. Let me show you what the court

21 reporter has marked as Deposition Exhibit 3 for the

22 Hillestad deposition. This particular document has

23 Bates numbers NB 000107 through 130. Would you

24 please take a look at that exhibit, Mr. Hillestad,

25 and -- and after you've had a chance to take a look

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1 at it, can you identify this Exhibit 3 as a true

2 and correct copy of Northern Bottling's 2014

3 customer development agreement for the convenience

4 and gas channel?

5 A. Looks to be what I remember of the 24

6 agreement -- 2014 agreement.

7 Q. So you became the -- the franchise manager

8 in July of 2014 and you were the territory manager

9 earlier than that; is that --

10 A. Correct.

11 Q. -- correct?

12 A. Yeah.

13 Q. Okay. First of all, can you tell us, what

14 is a CDA?

15 A. A CDA is a customer development agreement,

16 and essentially saying we're giving you these

17 benefits in exchange for this space so we can

18 mutually benefit by selling the product.

19 Q. Okay. So -- and I'm going to use CDA as a

20 shorthand for customer development agreement. So

21 we both understand that term; correct?

22 A. Correct.

23 Q. Okay. Is a CDA something that Northern

24 Bottling presents to a convenience and gas customer

25 to reach some agreement on a -- a plan or a program

1 for sales for the year?

2 A. An independent convenience and gas

3 customer.

4 Q. Okay. What do you mean by that?

5 A. You have the independent convenience and

6 gas customers that have the decision-makers that we

7 can talk to, and then you have the national

8 convenience and gas, like the Kum & Go's, the

9 Flying J's we'll have buyers in some other city and

10 state that we don't really have an opportunity to

11 present or talk to them.

12 Q. I see. So these independent convenience

13 and gas customers have their outlets in Northern's

14 territory, in other words?

15 A. That's correct.

16 Q. Whereas the national ones may have outlets

17 that span a number of different bottlers'

18 territories?

19 A. That's correct.

20 Q. Okay. Did you play a role at all in

21 developing this 2014 CDA?

22 A. Yes, I did.

23 Q. Okay. Could you explain what your role

24 was?

25 A. I helped put together some of the

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1 programs, some of the language, some of the pricing

2 in a collaborative effort with others.

3 Q. Who else worked on that?

4 A. Bruce Peterson, Troy Brezden, Harold

5 Potthast. Off the top of my head, that's who I

6 remember.

7 Q. Okay. When did Northern Bottling put

8 together Exhibit 3, which is the 2014 CDA?

9 A. The final version?

10 Q. Yes.

11 A. I couldn't tell you the exact date.

12 Q. Could you tell us generally what the

13 process is over, you know, that -- strike that.

14 Could you generally tell us the time

15 period over which Northern puts together its CDAs

16 each year?

17 A. Usually around August, September Pepsi

18 will give us an AOP or first look and they'll tell

19 us what's coming for the next year, and then that

20 kind of gives a better idea of the direction

21 they're going so we can kind of move in the same

22 direction to the customer's perspective. So that's

23 when kind of the process starts, and depending on

24 the different information we get throughout the

25 year, the different funding matrix, and that's when

1 we can solidify more of the details of the program.
 2 Q. Okay. Just so we get the acronyms -- one
 3 of the things about Northern Bottling and Pepsi is
 4 there's lots of acronyms. AOP means annual
 5 operating plan; correct?
 6 A. That's correct.
 7 Q. Okay. So Pepsico produces an annual
 8 operating plan that Northern Bottling as a bottler
 9 sees sometime around September of every year; is
 10 that right?
 11 A. Usually, yes.
 12 Q. Okay. And after that Northern Bottling
 13 works to put together its CDA program for these
 14 independent convenience and gas outlets within its
 15 territory; right?
 16 A. Yes.
 17 Q. And that takes place over the course of a
 18 month or two?
 19 A. It could be three, four months. It's
 20 something we're always working on throughout the
 21 year, so if we have an idea, we'll scribble it down
 22 and --
 23 Q. Okay. So when is it generally that
 24 Northern has a final version of a CDA that it then
 25 presents to its convenience and gas just --

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1 customers? Sometime near the end of -- of a
 2 calendar year for the following year?
 3 A. It's ranged between October all the way
 4 into January.
 5 Q. Okay. But it's in that period. So, for
 6 example, looking at this 2014 CDA, which is
 7 Exhibit 3 in front of you, is it your recollection
 8 that this particular document was put together
 9 sometime during the fall of 2013 up through
 10 approximately January of 2014?
 11 A. I would think so, yes.
 12 Q. Okay. So that's the general time frame
 13 for this. And what -- can you tell us what the
 14 strategy is that underlies Northern's decision in
 15 putting together a CDA?
 16 A. Well, I'd say one of our strategies is to
 17 mutually benefit ourselves and the customer by
 18 selling products to the end consumer.
 19 Q. Is there a marketing strategy associated
 20 with the CDA?
 21 A. I would say so, and a lot of that comes
 22 from Pepsi's AOP of what they're trying to do at a
 23 national and regional level that we can capitalize
 24 on a local level.
 25 Q. Okay. And so this is -- this is also a

1 document that informs the customer -- all -- all
 2 these questions relate to the convenience and gas
 3 channel, if that's clear.
 4 A. Clear.
 5 Q. Okay. So is this CDA, for example this
 6 2014 CDA, the document that Northern uses to inform
 7 its customers about what its pricing policies are
 8 going to be for the year?
 9 A. It informs them of their program options.
 10 Q. Okay. What do you mean by that?
 11 A. So depending on how much space or which
 12 programs they may opt into may influence their
 13 funding amount from us.
 14 Q. I see. So this document primarily
 15 identifies the -- the funding programs that a
 16 customer may get depending upon amount of space
 17 devoted to Northern products, placement, issues
 18 like that?
 19 A. Yeah. It gives them the options they can
 20 choose from.
 21 Q. Okay. So this document that is Exhibit 3
 22 does not inform the customer about what Northern's
 23 base prices are for its products, does it?
 24 A. Can you define base price?
 25 Q. Well, Northern has a price that it charges

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1 for its various Pepsi products and other, you know,
 2 Dr Pepper products that it sells to customers;
 3 correct?
 4 A. So you're referring to the cost from us to
 5 the retailer.
 6 Q. Yes. And maybe it's better if you tell me
 7 what is -- how does Northern describe the price
 8 that it charges a customer, a C&G chain, for
 9 example, for its Pepsi products?
 10 A. We've called them CDA pricing and we've
 11 the called them net pricing before.
 12 Q. Okay. What does CDA pricing mean?
 13 A. CDA, customer development agreement
 14 pricing.
 15 Q. And is CDA pricing a price that includes
 16 the funding that will reduce or discount the price
 17 that the customer ultimately pays for Northern's
 18 products?
 19 A. It includes the discounts from wholesale
 20 price.
 21 Q. Okay. So wholesale price is the starting
 22 price?
 23 A. That's correct.
 24 Q. Okay. Well, then I just want to make
 25 sure. So -- so, in other words, Northern charges a

1 wholesale price, and then if a customer enters into
2 a CDA, for example, it may get some discounts off
3 that price, depending upon product placement, how
4 many shelves it devotes to Northern's products or
5 any of the other elements of the CDA that it
6 chooses to agree to perform?

7 **A.** That's correct.

8 **Q.** Okay. Besides the CDA, are there any
9 other programs that a customer can take advantage
10 of to get a discount or a reduction in the
11 wholesale price?

12 **A.** There are cold drink programs, which we
13 will give the customer additional discounts in
14 return from them passing on those discounts to the
15 end consumer. There are different programs that
16 come up through the year that may have a discount
17 for a particular product based on funding levels we
18 may get from one of our partner companies or excess
19 inventory or something we're trying to accomplish
20 during that period.

21 **Q.** Okay. And with respect to wholesale
22 prices, does -- and let's take 2014 as -- as a year
23 for these questions so that we have, you know, a
24 time frame in mind. Does -- did Northern in that
25 year have the same set of wholesale prices for its

1 discounts that may be set at a national level, it
2 may be set at a local level.

3 **THE REPORTER:** You really have to slow
4 down.

5 **THE WITNESS:** Oh, I'm sorry.

6 **THE REPORTER:** You are cruising.

7 **Q. (MR. QUINN CONTINUING)** Yeah. It -- as
8 best you can. But -- you are very articulate, but
9 you do speak very quickly. So if you could
10 possibly slow down a little bit, it would help the
11 court reporter and also me too.

12 **A.** Absolutely.

13 **Q.** So, in other words, a grocery chain or a
14 big-box store may have access to different
15 promotional programs than an independent C&G chain
16 during the course of a year, which may have an
17 impact on the net price that those entities pay; is
18 that right?

19 **A.** Yes, they could.

20 **Q.** Okay. Are there different or have there
21 been different promotional programs available to
22 national C&G chains that have not been available to
23 the independent C&G chains in Northern's territory?

24 **A.** I would imagine over the year there has
25 been.

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1 products that it charged to the independent
2 convenience and gas outlets as it charged, for
3 example, to big-box stores like Walmart® or Target
4 or national C&G chains?

5 **A.** Yes. The wholesale pricing is a starting
6 point, so that's everybody's starting point.

7 **Q.** Okay.

8 **A.** If we sell product it has to start from
9 wholesale.

10 **Q.** Okay. So every -- in other words, every
11 customer in Northern's territory sees the same
12 wholesale price for its products?

13 **A.** On an invoice it will have the wholesale
14 price minus any allowances or discounts and then
15 calculates a net price, which is the final price.

16 **Q.** Okay. Does -- and, again, talk about 2014
17 for -- as an -- as an example of this. Did the
18 big-box stores in that year get discounts or
19 allowances separate and apart from any CDA that
20 those stores had entered into, discounts or
21 allowances off the wholesale price?

22 **A.** I couldn't be sure on what particular time
23 frame at what particular discount at what time. I
24 mean they have different promotions that run
25 throughout the year and they have corresponding

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1 **Q.** Okay. And so, in other words, the
2 national chains may actually see a lower net price
3 for Northern Bottling's products, Pepsi products,
4 than, for example, the independent C&G chains?

5 **A.** On certain products, yes, they could.

6 **Q.** Okay. Depending on whether there's a
7 promotion going on for those products or the like?

8 **A.** The national chains are more driven by the
9 national people that are calling them, so they're
10 really the ones kind of setting the price and they
11 ask us whether to align or not to align with it.

12 **Q.** Right. And in connection with alignment,
13 Northern Bottling may receive funding from Pepsico,
14 for example, in order to assist or underlie the
15 promotion; isn't that right?

16 **A.** That's true.

17 **Q.** Okay. So let's take a look at Exhibit 3,
18 if we can, and I'm -- I'd ask you to open it up to
19 page NB 0000109. On this page -- strike that.

20 Does this page show the range, the array
21 of products that Northern Bottling was prepared to
22 offer to its convenience and gas customers in 2014?

23 **A.** This page is attempting to show the vast
24 product portfolio we have.

25 **Q.** I see.

1 **A.** It doesn't contain every product that we
 2 sell.
 3 **Q.** Okay. What determined whether a product
 4 made it onto this page or not?
 5 **A.** Space.
 6 **Q.** Okay. Well, let's -- let's drill down
 7 slightly on that. So presumably Northern was going
 8 to put on this page the products that were most
 9 likely to catch the customers' eye, that is the C&G
 10 chains' eye as -- as big sellers; right?
 11 **A.** Well, this particular page, if I recall
 12 correctly, we tried to put a lot of our trademarks
 13 in there knowing that the particular brand would
 14 fall under that trademark.
 15 **Q.** Okay. Because that would impress the
 16 customer?
 17 **A.** Because that would inform the customer.
 18 **Q.** Okay. Well, you thought it would inform
 19 the customer in a positive way; right?
 20 **A.** Well, everything we try to do is tried in
 21 a positive way.
 22 **Q.** Right. So the answer to my question is
 23 yes?
 24 **A.** Yes.
 25 **Q.** Okay. Would you turn to the next page.

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1 This page, NB 000110, is entitled 2013 Local Market
 2 Analysis. Do you see that?
 3 **A.** I do.
 4 **Q.** And this is a local market analysis of the
 5 C&G market; correct?
 6 **A.** That's correct.
 7 **Q.** Okay. So do you know who prepared this
 8 analysis?
 9 **A.** It was a compilation of a lot of us who
 10 worked on the CDA, myself, Harold Potthast, Troy
 11 Brezden, Bruce Peterson, some of the things that
 12 we've been told by the customer, some of the data
 13 we've seen.
 14 **Q.** Okay. And this was prepared sometime in
 15 the fall of 2013?
 16 **A.** Possibly '14.
 17 **Q.** It's a 2014 --
 18 **A.** Oh, I'm sorry. You're correct.
 19 **Q.** -- CDA?
 20 **A.** It would be -- yeah.
 21 **Q.** This particular one would be the fall of
 22 2013?
 23 **A.** Yes.
 24 **Q.** Okay. And you've got ten points here
 25 regarding the market, and this information was

1 based upon the collective analysis of all of you at
 2 Northern regarding the C&G market in Northern's
 3 territory?

4 **A.** All of us that had input in the CDA, yes.

5 **Q.** Okay. When you say in the first bullet --
 6 or first number, 1, "After five years of double
 7 digit growth, the market is starting to level, and
 8 we expect to see steady and more predictable
 9 growth," what did you mean -- what did you
 10 understand that -- that sentence to mean?

11 **A.** We were seeing a lot of spikes due to the
 12 energy activity in western North Dakota, and as
 13 that industry was starting to stabilize, we saw a
 14 more steady growth curve than the spikes, the
 15 valleys and -- or the peaks and valleys.

16 **Q.** And some of those peaks and the spikes
 17 have been driven by the -- the oil boom in the
 18 Bakken range?

19 **A.** Some was driven by the oil boom. Some was
 20 based on the flood, the construction of what was
 21 happening in Minot. Some was based on tourism in
 22 the Devils Lake market, so multiple factors.

23 **Q.** Okay. The second point states,
 24 "Competition for traffic has increased, and we are
 25 seeing a larger entry of chain accounts with

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1 aggressive promotional schedules to drive traffic
 2 to recognized national banners."

3 Is that sentence referring to the entry of
 4 large -- larger chain C&G accounts?

5 **A.** Yes.

6 **Q.** Okay. And -- and so we understand this,
 7 with these aggressive promotional schedules, was
 8 that creating pricing pressure for the independent
 9 C&G accounts in Northern's territory?

10 **A.** They were seeing it as -- yes.

11 **Q.** Okay. And in the next point, you state,
 12 "Cost of living is continuing to rise despite the
 13 efforts to improve infrastructure, and consumers
 14 are looking for value to offset expenses."

15 By value, did you understand that to mean
 16 better pricing for products?

17 **A.** We understood that because the rents were
 18 so high, that their discretionary income was
 19 shrinking.

20 **Q.** Which meant that -- that they would be
 21 looking for lower prices or have less funds to
 22 spend on products like non-carbonated beverages or
 23 carbonated soft drinks?

24 **A.** That was our understanding, yes.

25 **Q.** Okay. Number 5 says, "Customer service

1 and employee morale in all channels of business
 2 continue to decline."
 3 Do you see that? That's --
 4 **A.** I do.
 5 **Q.** -- number 5.
 6 Could you tell us what analysis went into
 7 making that statement?
 8 **A.** That was referring to the high rate of
 9 turnover that our customers were seeing because of
 10 some of the activity in western North Dakota and
 11 the Minot/Devils Lake/Dickinson area. As they were
 12 turning over a lot of their employees so there was
 13 no training time, there was no really how-to's. It
 14 was just get out there and rein up.
 15 **Q.** Okay. So that was customer service and
 16 employee morale at the customer, in other words?
 17 **A.** At the customer level, yes.
 18 **Q.** Okay. The next bullet says, "Increased
 19 traffic into large grocery channels are driving
 20 take home product business into C&G channel."
 21 Do you see that?
 22 **A.** I do.
 23 **Q.** Can you explain to us what that particular
 24 statement means?
 25 **A.** That particular statement was referring

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1 to, again, because of some of the workforce
 2 shortage, you'd go into some of the large market
 3 stores and it might take you an hour to check out
 4 because they'd only have two tellers in to check,
 5 so people were moving more to the C&G because it
 6 was faster.
 7 **Q.** So this would be a market opportunity for
 8 the C&G channel?
 9 **A.** It could, yes.
 10 **Q.** Okay. And going down a couple more to
 11 number 9, it says, "Consumers are demanding premium
 12 brands at value pricing."
 13 Explain to us what that means.
 14 **A.** So a premium brand may be like a Lipton®
 15 product or a Starbucks product or a smartwater®
 16 product. They want these premium brands, but
 17 because their discretionary income is shrinking,
 18 they're willing to pay less for them.
 19 **Q.** Okay. So, again, that's another element
 20 creating pricing pressure on the C&G channels with
 21 respect to their product sales?
 22 **A.** It could be.
 23 **Q.** Okay. Is there any reason it wouldn't be?
 24 **A.** I can't really speak to what every
 25 consumer thinks, but --

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1 **Q.** Value pricing usually means a lower price;
 2 right?
 3 **A.** A val -- a lower price or a higher value
 4 per item, so a multipack item.
 5 **Q.** Right. So more volume at the same price
 6 or a lower price for the same volume?
 7 **A.** Less cost per ounce.
 8 **Q.** Right. So to -- to sort of take us
 9 through this -- the program offered in 2014, there
 10 are several pages here that refer to 2014 space by
 11 CSD cold vault, for example, pages NB 000114
 12 through 117. Would you just have those in front of
 13 you, Mr. Hillestad.
 14 Can you describe for us what these various
 15 programs were that Northern Bottling was offering
 16 to its customers, its C&G customers in 2014?
 17 **A.** These various programs were equating the
 18 amount of space that the customer was willing to
 19 provide for our products in exchange for additional
 20 discounts on additional -- additional advantages
 21 that we could help them with.
 22 **Q.** And these would be discounts off of
 23 wholesale prices --
 24 **A.** That's correct.
 25 **Q.** -- for the products?

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1 So, for example, if a customer was going
 2 to opt for the -- the -- the blue program, that
 3 customer would have to have a minimum of six
 4 shelves devoted to cold CSD products in order to
 5 get this base funding of \$1.25?
 6 **A.** 66 percent of the total CSD space with a
 7 minimum of six shelves.
 8 **Q.** I see. Okay. So it's a minimum of six,
 9 but you had to have 66 percent of whatever it is
 10 you had?
 11 **A.** That's correct.
 12 **Q.** Okay. And that \$1.25 was off the price of
 13 a case of 20-ounce?
 14 **A.** That's correct. 20-ounce CSD.
 15 **Q.** 20-ounce CSD. Right. And then the -- the
 16 other pages, 115 and 116, had again a minimum of
 17 six shelves, but a lower percentage of overall
 18 shelf space, and the resulting discount was
 19 smaller, in other words?
 20 **A.** That's correct.
 21 **Q.** Okay. Could you tell us the thinking that
 22 went in to determining the amount of base funding
 23 for these various programs. How -- how were those
 24 amounts set?
 25 **A.** The buck 25, 90-cent amount --

1 Q. Yes.
 2 A. -- you're referring to? It was really a
 3 collaboration between the different entities who
 4 put together the program. It could have been as
 5 simple as someone put a number, we put some pen to
 6 paper and said, What -- how would it work out, and
 7 that's how we came up with it.
 8 Q. Okay. And also describe for us the
 9 mechanics, how the -- the funding went. Let's say
 10 a customer opted for the blue program. Was the
 11 funding taken as a discount up front off the
 12 customer's invoice price or in some other fashion?
 13 A. It was a discount from wholesale on the
 14 invoice.
 15 Q. Okay. So, in fact, I know that it uses
 16 the term funding, but what it really referred to
 17 was a discount that Northern Bottling was prepared
 18 to offer the customer if it complied with the terms
 19 of the program; right?
 20 A. Yeah. We use funding and discount --
 21 Q. Interchangeably?
 22 A. -- what's -- interchangeably, yes.
 23 Q. Okay. Now, let's take a look at the NCB
 24 cold vault pages, that's 117 through 119.
 25 First of all, NCB stands for

1 number of shelves for additional funding or
 2 discount.
 3 Q. Okay. So, again, in terms of looking at
 4 this and figuring out how to read it, if you take a
 5 look at page 118, this shows if a customer had 14
 6 shelves for non-carbonated beverages and excluding
 7 Gatorade, as you say, if 50 percent of the shelves
 8 were devoted to Northern Bottling's product, then
 9 the customer would get base funding of \$15.05 a
 10 case?
 11 A. That's correct.
 12 Q. And the next line says if a customer
 13 agreed to increase or maintain the same
 14 non-carbonated beverage shelf space as '13, they
 15 could get an extra 15 cents a case?
 16 A. That's correct.
 17 Q. And then an extra dollar a case if they
 18 agreed to allow a -- a cooler -- innovation
 19 destination cooler to be placed in -- in the
 20 convenience and gas store; right?
 21 A. That's correct.
 22 Q. Okay. So how were these prices all
 23 determined for both the CSD cold vault and then the
 24 NCB cold vault space?
 25 A. Again, it's a collaborative effort between

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1 non-carbonated beverage?
 2 A. That's correct.
 3 Q. Okay. I've got to keep getting all these
 4 acronyms right. Could you explain to us how the
 5 NCB cold vault merchandising programs worked in
 6 connection with this 2014 CDA?
 7 A. The NCB cold vault merchandising were if
 8 you -- the customer allocated a particular number
 9 of NCB shelves, they would qualify for an
 10 additional amount of funding or discount off of
 11 wholesale.
 12 Q. Okay. Now, I noticed looking at 117,
 13 which you have right in front of you, there's no
 14 reference to Gatorade on that list. Why is that?
 15 A. Gatorade is a separate CDA.
 16 Q. Okay. Why -- why did Northern Bottling
 17 have a separate CDA for Gatorade?
 18 A. We get additional funding on Gatorade, so
 19 we felt it more effective to separate that off with
 20 an additional Gatorade CDA.
 21 Q. Okay. How did the Gatorade CDA differ, if
 22 at all, from the CDA pages here for other
 23 non-carbonated beverages?
 24 A. Without looking at it, I couldn't get into
 25 specifics, but it's based on the same premise,

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1 the people who put it together and we test some
 2 numbers, pencil them out and see how they worked
 3 out.
 4 Q. Okay. And that -- that group included
 5 you, Mr. Peterson, Troy Brezden and Harold
 6 Potthast?
 7 A. Potthast, yes.
 8 Q. Okay.
 9 A. Bruce and I do the majority of the work on
 10 the CDA, and Harold and Troy have the opportunity
 11 to consult and suggest any changes as they see fit.
 12 Q. Excuse me. In 2014, did Northern Bottling
 13 change its wholesale prices?
 14 A. I couldn't tell you off the top of my
 15 head.
 16 Q. I'm talking about as compared to '13.
 17 A. I'm not sure.
 18 Q. Okay. Now, looking again -- I'll just
 19 help out here -- towards the back of this CDA,
 20 there is -- there are a couple of pages, 127 and
 21 128, that are the CDA terms. Do you see that?
 22 A. I do.
 23 Q. Are these the terms that each customer has
 24 to agree to in order to get the funding discounts
 25 that are spelled out in the programs described in

1 the CDA?

2 **A.** That's correct.

3 Q. Okay. Now, does -- does Northern

4 typically get the customer to actually sign

5 something agreeing to the terms of the CDA?

6 **A.** Yes. And we've done it a couple different

7 ways. In years past there has been initial markers

8 on each one of these terms.

9 Q. I'm sorry. I didn't hear what you said.

10 Initial?

11 **A.** Initial markers.

12 Q. Okay. What -- what is that?

13 **A.** A line where it says you initia -- or

14 initial your name and it says you read this and

15 understand it.

16 Q. Okay.

17 **A.** And that's come and gone with different

18 CDAs based on customers' requests. And then

19 there's also the signature panel on the last page

20 acknowledging that they consent to this agreement.

21 Q. That's NB 000128?

22 **A.** That's correct.

23 Q. Okay. Is -- do any of the independent

24 convenience and gas outlets also sell fountain

25 products?

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1 **A.** They do.

2 Q. Okay. Is there a CDA that the fountain

3 products -- strike that.

4 Is there a CDA that addresses fountain

5 products?

6 **A.** There is a page in this particular CDA

7 that addresses fountain products.

8 Q. Okay. And which one is that?

9 **A.** It is 0000122, Food Service Programs.

10 Q. Okay. Was there any funding or discount

11 provided in connection with this fountain syrup

12 pro -- program?

13 **A.** I wouldn't say funding or discount. It is

14 offering free equipment and two free BiB per year

15 along with participation in any of our free-cup

16 programs.

17 Q. Okay. So it's cups, equipment and a

18 couple of -- BiB means bag in box; right?

19 **A.** That's correct.

20 Q. Okay. Do you recall which of your

21 independent convenience and gas customers signed up

22 for the 2014 CDAs?

23 **A.** Not off the top of my head, no.

24 (Deposition Exhibits 4 and 5 were marked

25 for identification.)

1 Q. (MR. QUINN CONTINUING) Mr. Hillestad, I'm

2 going to show you what the court reporter has

3 marked as Deposition Exhibits 4 and 5. Exhibit 4

4 is a document with the Bates stamp numbers NB TB

5 0000167 through 194. Strike that. I better be

6 careful. These -- these particular exhibits don't

7 have sequential numbering.

8 Exhibit 4 has Bates stamp numbers NB TB

9 0000167 through 169, also 170, 174, 185, 193. And

10 Exhibit 5 has Bates numbers NB TB 0002019, 2020,

11 2035, 2041, 2042 and 2043.

12 So, Mr. Hillestad, I'm going to hand you

13 what's been marked as Deposition Exhibits 4 and 5,

14 and could you first take a look at Exhibit 4 and --

15 which purports to be a -- an e-mail -- with a cover

16 e-mail from you to Bruce Peterson and Troy Brezden

17 dated 12-27-2013 with the subject line C&G Schedule

18 of cold vault space by vendor. And can you tell us

19 whether this is a true and correct copy of an

20 e-mail you sent along with some attachments.

21 **A.** Looks correct. And --

22 Q. Okay.

23 **A.** -- seems to be an attachment, yes.

24 Q. Okay. Well, taking a look at the second

25 page of this exhibit, 169, and I -- I apologize for

84

1 the small print, but, again, this is -- is a PDF

2 document and that's how it was produced to us. I'd

3 just ask you to take a look at this particular

4 exhibit page and tell us what it -- what

5 information is contained on that page.

6 **A.** It's a schedule of the amount of shelves

7 allocated by vendor per store.

8 Q. Okay. And these are the independent

9 convenience and gas outlets?

10 **A.** There are some small chains on there as

11 well.

12 Q. Okay. So it's -- is it all convenience

13 and gas outlets within the Minot division?

14 **A.** Yes, it looks like it.

15 Q. Okay. So looking at this document, does

16 that refresh your recollection as to which

17 convenience and gas chains had agreed to a 2014

18 CDA?

19 **A.** This is a record of the space that they

20 allocate in their store. It doesn't in -- or

21 indicate which program, if any, they signed up for.

22 Q. I understand that, but I'm just wondering

23 if looking at that document refreshes your

24 recollection at all as to which -- which accounts

25 may have signed up for the 2014 CDA.

1 **A.** It would be just guessing and speculation
 2 by saying, you know, this is signed up, this one
 3 isn't, without seeing their actual CDAs.
 4 **Q.** Do you know whether Enerbase signed up for
 5 the 2014 CDA?
 6 **A.** I don't believe they did.
 7 **Q.** They had not?
 8 **A.** I don't believe so.
 9 **Q.** Do you know why not?
 10 **A.** I believe they had issues with the
 11 program.
 12 **Q.** What were those issues?
 13 **A.** When it was originally communicated to me,
 14 I believe their words were economic and financial
 15 issues of why they weren't going with our program.
 16 **Q.** When was that communicated to you?
 17 **A.** That would have been in February of -- it
 18 would be 2014.
 19 **Q.** Who communicated that to you?
 20 **A.** Shawna.
 21 **Q.** So Shawna Chilcoat --
 22 **A.** Chilcoat.
 23 **Q.** -- was in -- working for Enerbase as of
 24 February 2014, approximately?
 25 **A.** Yeah. She was the one who was my contact

1 Mr. Abernathy say to you regarding Enerbase's
 2 economic and financial issues?
 3 **A.** They did not say anything about their
 4 economic/financial issues. It was a phone call put
 5 in to me by Shawna letting them know -- letting me
 6 know that they weren't going to go with the 2014
 7 CDA.
 8 **Q.** Okay. So did you visit Enerbase's office
 9 to present the CDA?
 10 **A.** Yes, I did.
 11 **Q.** And you met with Shawna, Stu and Scott?
 12 **A.** That's correct.
 13 **Q.** Okay. How long did the meeting last?
 14 **A.** I couldn't tell you off the top of my
 15 head. I'd -- I'd imagine at least an hour, if not
 16 more.
 17 **Q.** Okay. Do you recall what it is generally
 18 that you said to them about the CDA?
 19 **A.** It would be presenting the CDA page
 20 through page.
 21 **Q.** Including the market analysis --
 22 **A.** Yep.
 23 **Q.** -- and the -- the various programs for
 24 CSDs and non-carbonated -- non-carbonated beverages
 25 and the equipment and the like for the fountain

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1 point on Enerbase's side at that period.
 2 **Q.** So you -- you were the person who
 3 presented the 2014 CDA to Shawna?
 4 **A.** To Shawna, Stu Carlson and Scott
 5 Abernathy.
 6 **Q.** Sorry. The last name was Scott Abernathy?
 7 **A.** That's correct.
 8 **Q.** What positions did each of those people
 9 hold at Enerbase?
 10 **A.** I believe Stu is an operations manager and
 11 works some with the IT department. And Scott, he
 12 was a manager of one of the stores at that time
 13 period.
 14 **Q.** And Shawna's position?
 15 **A.** I think she was referred to as a district
 16 manager at that time. I'm not exactly sure what
 17 her title was.
 18 **Q.** Okay. And you were in February of 2014 a
 19 territory manager rather than a franchise manager?
 20 **A.** I believe so, yes.
 21 **Q.** Okay. So was that the -- the first time
 22 when you met with the three of them that you were
 23 presenting the 2014 CDA?
 24 **A.** Yes.
 25 **Q.** And what did Shawna or Mr. Carlson or

1 product?
 2 **A.** Yes. And answering any questions if any
 3 popped up during that time.
 4 **Q.** Okay. At that meeting do you recall
 5 anything that -- that Enerbase said about pricing
 6 or economic pressures?
 7 **A.** I don't believe there was a lot of
 8 discussion around pricing. They had a couple
 9 concerns around our technology, our -- our delivery
 10 handhelds. I believe there was another concern
 11 about shell deposits.
 12 **Q.** Could you -- starting with the delivery
 13 handhelds, what was their concern?
 14 **A.** Our -- at that time and currently our
 15 delivery handheld does not produce the UPC or
 16 scannable bar code on the invoice, and it would
 17 make it easier for them in their system if we could
 18 do that, and it was a limitation of our technology
 19 at the time.
 20 **Q.** So, in other words, they -- it meant --
 21 what did they have to do in order to overcome that
 22 limitation?
 23 **A.** They were asking, I believe, if we had any
 24 plans to change that or invest in new technology to
 25 get them that particular aspect of an invoice.

1 Q. Okay. What did you say?
 2 A. At that time we were working with a new
 3 warehouse system that we were capable of printing a
 4 UPC bar code on a separate sheet and, to my
 5 knowledge, that was our capability at the time.
 6 Q. But not the invoice as they had asked?
 7 A. But not the invoice, yeah.
 8 Q. And what about the -- the shell issue?
 9 What was their concern?
 10 A. They were asking if they could be exempt
 11 from the deposit.
 12 Q. Did they explain why?
 13 A. I don't exactly remember. They -- I guess
 14 they just didn't like it and that was another
 15 calculation they had to perform on their invoice.
 16 Q. Could you tell us what deposit Northern
 17 required for its shells?
 18 A. A three-dollar deposit.
 19 Q. Okay. And what is a shell?
 20 A. A shell is the container that the bottles
 21 in loose form come in so they don't just fall
 22 apart.
 23 Q. These are the 20-ounce carbonated soft
 24 drinks, for example?
 25 A. Yes.

1 system.
 2 Q. But the answer to my question is yes, they
 3 did not receive the CDA funding discounts in 2014
 4 no matter what amount of shelf space was devoted to
 5 Pepsi products; is that right?
 6 A. Yes, if they did not sign the CDA.
 7 Q. Okay. So what were the economic and
 8 financial issues that the Enerbase people
 9 identified for you in the subsequent phone call?
 10 A. It was Shawna who --
 11 Q. Okay.
 12 A. -- I believe -- and I believe that was her
 13 words -- she said economic issues and she didn't
 14 elaborate.
 15 Q. Okay. Did you ask her what she meant?
 16 A. I did.
 17 Q. What did she say?
 18 A. I believe it was something along the line
 19 that they could get it from another supplier
 20 cheaper.
 21 Q. And she was telling you this in February
 22 of 2014?
 23 A. On the phone, yes.
 24 Q. Okay. Did you ask her who that supplier
 25 was?

1 THE VIDEOGRAPHER: Thomas, would you move
 2 your mike up? It's rubbing -- you're rubbing on
 3 it. Thank you.
 4 Q. (MR. QUINN CONTINUING) So had Enerbase
 5 signed a 2013 CDA with Northern?
 6 A. I don't recall.
 7 Q. Do you recall whether Enerbase ever signed
 8 a CDA with Northern?
 9 A. I believe they signed the previous year,
 10 but that time I wasn't calling on the account so I
 11 couldn't be sure.
 12 Q. So that would have been 2012?
 13 A. I would think 2012, 2010, 2009.
 14 Q. Now, if Enerbase did not sign the CDA, did
 15 that mean that it did not receive any of the
 16 funding discounts provided for in the CDA?
 17 A. That's correct.
 18 Q. Okay. Even if, for example, Enerbase had
 19 six shelves devoted to Northern Bottling products
 20 and more than 66 percent of the shelf space devoted
 21 to Northern Bottling products, it still would not
 22 get the funding discounts because it had not signed
 23 the CDA; is that right?
 24 A. I believe at that time they needed to have
 25 a signed CDA so we could input the pricing into our

1 A. I bel -- it's something I would have
 2 asked. I know I'm not sure if I did, but it's
 3 something I would have asked, yes.
 4 Q. What do you recall the back-and-forth, if
 5 you can? Just tell us what you recall about your
 6 conversation with -- with Shawna when she mentioned
 7 that they could get product cheaper from another
 8 supplier.
 9 A. I recall it was sometime in February
 10 because it was the first day of my vacation and I
 11 was sitting in the LAX airport.
 12 Q. Okay.
 13 A. And I had to try to find a quiet place to
 14 take a phone call. And she called and notified
 15 that -- to no longer deliver to their stores or if
 16 we could stop any pending deliveries and that they
 17 would, I believe, not be signing the CDA, and I'm
 18 sure I pressed the issue and I believe she said
 19 economic reasons.
 20 Q. This is February of 2014, Mr. Hillestad?
 21 A. I believe so.
 22 Q. You're sure it's not February of 2015?
 23 A. It could have been '15, yes. '14 -- yeah.
 24 Q. So let's look at '14, 2014 then. In fact,
 25 Northern Bottling delivered lots of Pepsi products

1 to Enerbase chain stores in 2014; isn't that right?

2 **A.** I believe so.

3 **Q.** Okay. So let's just look at 2014 when

4 these products were being delivered. During that

5 period of time -- and I'm -- I'm not getting into

6 2015 yet, I'm just focusing on 2014 -- did Enerbase

7 ever complain to you about pricing or service

8 problems or the like?

9 **A.** In '14 I wouldn't have been handling the

10 account at that point, so any conversation would

11 have been in passing. For instance, you know, that

12 time I talked to Shawna just in passing and she was

13 upset about the glide issue. So that would have

14 been the extent of our communication.

15 **Q.** Well, in fact, you visited with Shawna and

16 Stu and Scott in December of 2014; isn't that

17 correct?

18 **A.** I believe I took over the account sometime

19 in the later part of '14.

20 **Q.** Okay.

21 **A.** Without a calendar, I couldn't tell you

22 the exact date.

23 **Q.** Okay. So the testimony you gave earlier

24 about your presentation and the like had to do with

25 the 2015 plan?

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1 **A.** Yeah. I would have presented the 2015

2 program.

3 **Q.** Okay. Not the 2014.

4 **A.** No. That would have been a misspoke.

5 Without a calendar, I'm --

6 **Q.** Okay.

7 **A.** -- a little hazy on dates.

8 **Q.** Okay. Well, let's just kind of button one

9 thing up. Just -- Exhibit 5, now we're back in May

10 of 2014. Do you recognize Exhibit 5 as reflecting

11 the schedule of cold vault space for the Minot

12 division as of May of that year?

13 **A.** Of the attachment of it?

14 **Q.** Yes. Exactly. The -- the page that's got

15 NB TB 0002020.

16 **A.** Yep.

17 **Q.** So let me just drill down on this with you

18 a little bit. Can you identify on that particular

19 page -- and, again, I apologize for the small size

20 of the print. It -- it was the way we got it, and

21 if you need to hold it closer to be able to read

22 it, please do that.

23 First of all, can you identify for us

24 which of the outlets in the left-hand column were

25 Enerbase outlets?

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1 **A.** Would you like them identified by the

2 store name or the account number or --

3 **Q.** I think probably the -- the store name

4 would work.

5 **A.** Okay. Cenex C-store Corner Express is an

6 Enerbase. I'm not sure if Xpress Mart was. They

7 made an acquisition of that account at some point,

8 but I'm not sure at what point they did. Cenex

9 C-store North Broadway is an Enerbase account.

10 Cenex C-store SE, or southeast, is an account.

11 That's --

12 **Q.** What about Cenex C-store South Broadway?

13 **A.** Cenex C -- yeah, BDWY, that's also an

14 account. Yes.

15 **Q.** Okay. So there's four, maybe five,

16 depending on -- they acquired Cenex -- or, rather,

17 Enerbase acquired Xpress Mart at some point?

18 **A.** Can I write on this and mark them off?

19 **Q.** Yeah. Why don't you in the left-hand

20 column just put a little asterisk next to the ones

21 that were Enerbase stores.

22 **A.** (Witness complies.) Okay. So it looks

23 like four. Xpress Mart I'm not sure on --

24 **Q.** Okay.

25 **A.** -- because I'm not sure when they acquired

96

1 that.

2 **Q.** Okay. So just looking at the information

3 contained on this page, this contains a breakdown

4 of the number of shelves that each of these stores

5 devotes to Pepsi CSD products, Pepsi NB -- NCB,

6 non-carbonated beverage, Coke CSD, Coke NCB and

7 various other products on their shelves; correct?

8 **A.** That's correct.

9 **Q.** Okay. The far right-hand column,

10 Warehouse Distributor, what is -- what's -- what

11 information is contained in that column?

12 **A.** That is how many shelves that their

13 particular warehouse distributor is allocating in

14 the cold vault.

15 **Q.** Okay. So let's take an example. Looking

16 at the -- the Cenex Corner Express, that's --

17 Core-Mark is shown as the warehouse distributor; is

18 that correct?

19 **A.** Yep. That's correct.

20 **Q.** And it -- I have to confess that the print

21 is so small it's hard to see. In the blue column,

22 does that say Secondary Cooler --

23 **A.** I'm just going to use this as a ruler.

24 **Q.** -- Pepsi? It's the blue column three to

25 the left of the Warehouse Distributor name.

1 A. That says -- looks like Secondary Cooler
 2 Pepsi.
 3 Q. And the -- the -- to the right of that it
 4 says Secondary Cooler -- is that Coke?
 5 A. I'm thinking it would. Maybe KO.
 6 Q. KO is an abbreviation for Coke; right?
 7 A. Mm-hmm. That's --
 8 Q. Yes?
 9 A. -- correct.
 10 Q. Okay. And then it says Secondary Cooler
 11 3rd, meaning third party?
 12 A. That's correct.
 13 Q. Okay. So in this particular array where
 14 we're looking at Corner Express, doesn't that
 15 number one in the Secondary Cooler Pepsi refer to
 16 the Northern Bottling secondary cooler?
 17 A. Yes, it would.
 18 Q. Okay. And, similarly, the secondary
 19 cooler Coke refers to Cokes and then there's a
 20 third part that doesn't have any here; right?
 21 A. That's correct.
 22 Q. So the warehouse distributor, that column
 23 shows what distributor supplies a variety of
 24 products to each of these stores; correct?
 25 A. It's -- yes. So it will be the warehouse

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1 distributor, so that particular one was Core-Mark.
 2 So if a bottled-water package would come off a
 3 Core-Mark truck and they allocated a shelf for
 4 that, that's where that would show up in that
 5 column.
 6 Q. Okay. But -- but these warehouse
 7 distributors that are listed here for these
 8 outlets, they distribute a whole variety of
 9 products; correct?
 10 A. I believe so, yes.
 11 Q. Could you tell us -- just explain
 12 generally how a -- a C&G outlet store like the
 13 Enerbase ones, how they use warehouse distributors
 14 such as Core -- Core-Mark.
 15 A. Majority of them they're getting a lot of
 16 their, I guess, grocery or candy, some cigarettes,
 17 different items like that, some beverages.
 18 Q. So a whole variety of products --
 19 A. That's correct.
 20 Q. -- that comes into the store?
 21 And is it your understanding that -- that
 22 the stores or, let's say, Enerbase enters into some
 23 form of agreement with Core-Mark to get these
 24 arrays of products?
 25 A. I would think they would. You know, I

99

1 don't have any knowledge of their agreement, but --
 2 Q. Have you ever seen an agreement between
 3 Enerbase and Core-Mark?
 4 A. No, I have not.
 5 Q. Ever asked for one?
 6 A. Yes, I have.
 7 Q. When?
 8 A. I'm sure sometime in the last year.
 9 Again, I'm not sure of the exact. I'm sure I would
 10 have came up with some conversation we've had.
 11 Q. And what was the response you got from
 12 Enerbase?
 13 A. I haven't received one, so I'm sure they
 14 said they were unable or wouldn't give me a copy.
 15 Q. What do you actually recall,
 16 Mr. Hillestad?
 17 A. I don't recall their exact words.
 18 Q. All you know is that you haven't received
 19 one from them?
 20 A. That's correct.
 21 Q. Do you recall approximately when it was
 22 that you asked for an Enerbase/Core-Mark agreement?
 23 A. I believe I asked for one early part of
 24 this year.
 25 Q. So early 2016 and -- and you don't recall

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1 the response, but you haven't received anything
 2 from them?
 3 A. That's correct.
 4 MR. QUINN: Okay. Why don't we take a
 5 break.
 6 THE VIDEOGRAPHER: This is the end of tape
 7 two. We're going off the record at 11:21.
 8 (Recessed at 11:21 a.m. and reconvened at
 9 11:33 a.m.)
 10 MR. QUINN: I'd ask the court reporter to
 11 mark as Hillestad Deposition Exhibit 6 a multipage
 12 document with Bates stamp numbers NB TB 00001 --
 13 141 through 166, which purports to be Northern
 14 Bottling Co. 2015 Customer Development Agreement
 15 for Convenience & Gas.
 16 (Deposition Exhibit 6 was marked for
 17 identification.)
 18 Q. (MR. QUINN CONTINUING) Mr. Hillestad, I
 19 hand you what the court reporter has marked as
 20 Deposition Exhibit 6, and would you take a look at
 21 this and after you've had a chance to do that,
 22 please indicate whether this is, in fact, a true
 23 and correct copy of Northern Bottling's 2015
 24 customer development agreement for the convenience
 25 and gas channel.

1 THE VIDEOGRAPHER: Tom, your mike again.
 2 Thank you.
 3 THE WITNESS: Looks to be.
 4 Q. (MR. QUINN CONTINUING) Okay. So before
 5 we broke, we were talking about the 2014 CDA and
 6 your contacts with Enerbase. And -- and you also
 7 took a look at Exhibit 4 and Exhibit 5 which
 8 reflected the customers -- convenience and gas
 9 customers in the Minot region and their warehouse
 10 distributors and shelf space allocated to various
 11 products. Do you recall that?
 12 A. I do.
 13 Q. Okay. Having looked at Exhibits 4 and 5
 14 and -- and now Exhibit 6, does that refresh your
 15 recollection at all as to which convenience and gas
 16 customers in the Minot market area had signed 2014
 17 CDAs with Northern Bottling?
 18 A. Again, without the actual CDAs, I'd just
 19 be guessing.
 20 Q. Do you know whether any -- can you
 21 identify any one C&G customer that signed the 2014
 22 CDA?
 23 A. Cenex C-store Kenmare.
 24 Q. I'm sorry?
 25 A. Cenex C-store Kenmare.

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1 Q. Okay. So you know at least one --
 2 A. Mm-hmm.
 3 Q. -- signed up. More than one?
 4 A. I'm sure I could name off a couple, but at
 5 some point it would be guessing without the --
 6 Q. Okay. Well, how popular was the CDA
 7 program that Northern had introduced for the 2014
 8 calendar year?
 9 A. I believe we had the majority of our
 10 customers participate.
 11 Q. Okay. But not Enerbase?
 12 A. I don't believe so.
 13 Q. Okay. So now let's take a look at the
 14 2015 CDA, which is Exhibit 6 in front of you. Did
 15 you again participate in putting together this CDA?
 16 A. I did.
 17 Q. Along with Mr. Peterson and Mr. Brezden
 18 and Mr. Polthast?
 19 A. Potthast.
 20 Q. Potthast, I'm sorry.
 21 A. Yes.
 22 Q. Okay. And in connection with putting
 23 together the 2015 CDA, you again did a 2014 market
 24 analysis; correct?
 25 A. That's correct.

1 Q. Okay. And that's on page -- I'll just
 2 recite the last three digits -- 144; correct?
 3 A. Correct.
 4 Q. Now, in the first bullet here, you say,
 5 "The overall market is leveled compared to the more
 6 unpredictable growth in years past and traffic
 7 particularly in some western part" -- or "some
 8 parts of western North Dakota has slowed."
 9 What caused the slowdown in traffic?
 10 A. Less people.
 11 Q. Okay. And therefore less product sales?
 12 A. That would be a correlation.
 13 Q. Okay. Was Enerbase based in -- in western
 14 North Dakota?
 15 A. There would be some debate on what's
 16 western North Dakota and what's not western North
 17 Dakota.
 18 Q. Okay. How about the Minot market area,
 19 would that be -- would that fall within western ND
 20 as you've described it in this first bullet point?
 21 A. This was referring more to the -- the
 22 Stanley area. Minot was affected by a lot of the
 23 energy business, but it was more so the farther
 24 west you got.
 25 Q. Okay. This -- this analysis also

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1 indicates, "A greater entry of new accounts have
 2 grown the overall market but has also contributed
 3 to greater saturation which is driving traffic to
 4 multiple retailers."
 5 Could you explain what -- what analysis or
 6 what it is that -- that you all observed to make
 7 that point?
 8 A. More outlets were opening within the
 9 market. So Holiday Stationstore may have opened a
 10 new store, another national chain may have come in,
 11 which made the pie bigger. We sold more as a
 12 whole, but it also gave the consumer more options.
 13 Q. Also put pressure on the market share of
 14 any existing convenience and gas outlets?
 15 A. It could have, yes.
 16 Q. Because there's -- population isn't
 17 growing, there's more outlets, so unless people
 18 suddenly started drinking a whole lot more
 19 carbonated soft drinks or non-carbonated beverages,
 20 the pie was going to be spread out more than it had
 21 in the past; right?
 22 A. I couldn't speak to the exact population
 23 numbers, but, yeah, that's the general theory.
 24 Q. Okay. And then the third bullet point
 25 indicates, "Retailers are becoming more aggressive

1 with pricing, promotions, consumer loyalty programs
2 and space to sales allocation to try to capture new
3 business and retain existing business."

4 Do you see that?

5 **A.** I do.

6 **Q.** Explain to us what observations you made
7 or others in your team to make this point.

8 **A.** Because there was more outlets and either
9 a growth or decline in population, the customers or
10 the outlets were trying to entice the consumer to
11 frequent their store more, whether it be loyalty
12 programs, better pricing, a variety of deals.

13 **Q.** So all those factors would put competitive
14 pressure on existing outlet chains like Enerbase's;
15 correct?

16 **A.** I would think so.

17 **Q.** Okay. And, in fact, in your next point,
18 number 4, you state, "Competition for traffic will
19 continue to increase, and we will continue to see a
20 larger entry of chain accounts with aggressive
21 promotional schedules to drive traffic to
22 recognized national banners."

23 And by that did you mean that these larger
24 chains were also increasing their presence within
25 markets like the Minot market?

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1 **A.** That was our assumption, yes.

2 **Q.** And, again, more competitive pressure on
3 Enerbase or independent C&G chains; correct?

4 **A.** Yes, that was our analysis.

5 **Q.** Okay. And, once again, you -- you talk in
6 a couple of different places here about consumers
7 looking for value to offset expenses or demanding
8 premium brands at value pricing. Those were --
9 were trends or observations that you made in 2014
10 also; correct?

11 **A.** That's correct.

12 **Q.** So this was a continuing trend that
13 continued through 2014 and you -- you assumed that
14 it would apply in '15 as well?

15 **A.** We believed so.

16 **Q.** Okay. And I see that again in -- in this
17 2015 CDA you refer to customer service and employee
18 morale in all channels of business continue to
19 decline. And that is again your observation that
20 employee turnover at the customer outlets was
21 negatively affecting service as well as morale and
22 creating a problem for your -- your customers?

23 **A.** Negative reflecting their consumers.

24 **Q.** Right.

25 **A.** Yes.

1 **Q.** And if it was a negative impact on their
2 consumers, the outlets are your customers, so did
3 it also have a negative impact on Northern Bottling
4 in terms of sales?

5 **A.** This is referring to if they were getting
6 bad customer service at one outlet, you know,
7 what's to stop them to change to another outlet?
8 We would sell product to both outlets, but it
9 was -- we're more referring to the
10 customer/consumer relationship.

11 **Q.** Did you ever observe whether or not the
12 Enerbase outlets had this problem with customer
13 service and employee morale?

14 **A.** I couldn't speak to that specifically.

15 **Q.** Well, just based on -- on your work with
16 Enerbase over the last couple of years since you
17 assumed primary responsibility for overseeing that
18 account, have you observed customer service
19 problems and employee morale problems at Enerbase
20 stores?

21 **A.** I would say they struggled just like most.
22 You know, my definition of customer service may be
23 different than someone else's definition of
24 customer service. I may have a higher standard, so
25 again that's kind of relative to my own

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1 interpretation.

2 **Q.** I understand, but I'm -- I'm -- what I'm
3 trying to do is to figure out whether you would
4 have included Enerbase within the group of Northern
5 Bottling customers that were negatively impacted by
6 your point number 7, "Customer service and employee
7 morale in all channels of business continues to
8 decline"?

9 **A.** It was a general market statement, so
10 Enerbase being part of that general market, they
11 would be included within that.

12 **Q.** So they'd have -- they'd -- they'd feel
13 some of those negative effects?

14 **A.** I would imagine they would, if they had
15 that problem.

16 **Q.** Okay. Well, do you think they had that
17 problem?

18 **A.** Again, you know, anything -- my opinion
19 would just be opinion.

20 **Q.** Well, that's what I'm asking for.

21 **A.** Okay. I was -- in my opinion, I thought
22 pretty much every customer we called on had some
23 sort of portion of that.

24 **Q.** Okay. Including Enerbase?

25 **A.** I would say so, yes.

1 Q. Okay. Looking at 2015 again and the pages
2 that deal with your CSD cold vault programs, the --
3 the blue, the white, the red, how did -- how did
4 the 2015 program change in comparison with the 2014
5 program?

6 A. If you want to just make a comparison,
7 looks like the funding is the same. There's some
8 updated data based on the previous recording
9 period. I believe the bullet points are similar.

10 Q. Take a look at the white program, which in
11 '15 is page 152, and in 2014, which I think you
12 still have in front of you, is NB 0000115.

13 A. Okay.

14 Q. There's a change in the minimum number of
15 shelves that you required a customer to have in
16 order to get this discount; correct?

17 A. That looks correct.

18 Q. So even if an independent outlet had the
19 same 60 percent allocation of space but didn't meet
20 the 11-shelf requirement, they -- they wouldn't get
21 this in 2015 even if they had gotten it in '14?

22 A. That's correct.

23 Q. Okay. What was the thinking behind
24 increasing the shelf space requirement for the
25 white program?

1 NB 0000118 and in 2015 it's NB TB 0000155.

2 A. Okay.

3 Q. Now, in this -- in comparing those two
4 programs, in 2015 it appears that the base funding
5 for a customer that had 14 shelves allocated to
6 Northern Bottling decreased from \$15.05 a case to
7 \$13.61; is that correct?

8 A. That's correct.

9 Q. And, similarly, the total NCB funding for
10 20-ounce CSD decreased from \$16.55 to \$15.11?

11 A. That looks correct.

12 Q. What was the reason -- and, in fact, this
13 decrease in funding applied across the board in
14 2015; isn't that right?

15 A. Looks like that.

16 Q. Why?

17 A. I believe that's taking into account a
18 price increase. So, again, without having anything
19 in front of me, I believe there was -- and if we
20 calculate the difference, I'm guessing there's a
21 dollar 40 to a dollar 44 difference. So when we go
22 up in price, we usually go up six cents, but the
23 customer will go up ten because we move up by price
24 points. So that market may have moved from one
25 sixty-nine to one seventy-nine.

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1 A. Honestly, I believe it was a typo.

2 Q. Oh. Well, did you apply the typo to all
3 the customers?

4 A. Yes. Because if I recall, we had some
5 customers that qualified based on that 6-shelf
6 minimum that we then had to make a change in '15
7 based on the 11-shelf.

8 Q. And how did those customers react?

9 A. As far as I know, they -- we've made the
10 change because most likely those customers had more
11 than the 6-shelf minimum and it probably wasn't
12 that difficult for them to go up to the 11.

13 Q. Do you recall which customers were
14 affected by that change in shelf requirement?

15 A. I believe there was a couple in our
16 Dickinson market.

17 Q. In the Dickinson market?

18 A. Yeah.

19 Q. What were the names of those outlets?

20 A. I couldn't tell you off the top of my
21 head.

22 Q. And then how about the cold vault -- the
23 NCB cold vault space by shelf? And let's just take
24 as an example the -- the 14-shelf requirement for
25 each year. I think on the 2014 program it's page

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1 Q. For -- for what does the one sixty-nine,
2 one seventy-nine refer to, what volume?

3 A. Retail price.

4 Q. Okay.

5 A. What the average retail price would be out
6 there.

7 Q. What happened to the wholesale price
8 between 2014 and '15?

9 A. I'm not sure if it changed or not. I
10 guess we'd -- I'd have to go back and look at it,
11 but --

12 Q. Well, what do you recall? That was
13 just --

14 A. I don't --

15 Q. -- last year.

16 A. -- believe it changed, but, again, I'm not
17 a hundred percent sure. Different wholesales move
18 up at different times.

19 Q. Do you recall whether the wholesale price
20 was reduced?

21 A. I don't believe we've had a wholesale
22 change on 20-ounce CSD, which this is referring to,
23 in four, five years.

24 Q. Okay. So then the reduction in discount
25 funding between '14 and '15 ended up being a price

1 increase for Northern Bottling's customers;
 2 correct?
 3 **A.** Yeah. It reflects the price increase.
 4 Yeah.
 5 **Q.** And by my calculation using again this
 6 14-shelf example, the -- the -- the loss of funding
 7 resulted in a -- about a 9 and a half percent
 8 increase in the price?
 9 **A.** Without a calculator, I couldn't tell you,
 10 but it should be about a buck 40, buck 44. It'd be
 11 six cents per unit, is what usually happens when we
 12 go up in price.
 13 **Q.** Okay. But it -- it in this case is more
 14 like -- the loss of funding is more along the lines
 15 of something more than six cents for the case;
 16 correct?
 17 **A.** Yeah. Without a calculator, I'd have to
 18 take your word at it --
 19 **Q.** Well --
 20 **A.** -- which I'm not questioning, but --
 21 **Q.** -- looks to me it's about a buck 44;
 22 would --
 23 **A.** Yeah. So six cents per unit.
 24 **Q.** -- that be right?
 25 **A.** Right. For -- because a case has got --

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1 **A.** 24.
 2 **Q.** -- 24.
 3 **A.** I'm sorry.
 4 **Q.** CDA terms and conditions at the back of
 5 the 2015 agreement, starting at NB TB 0000163 to
 6 164, stayed the same in 2015 as in 2014; right?
 7 **A.** It would seem so.
 8 **Q.** Okay. So getting back to Enerbase then,
 9 when you visited -- well, strike that.
 10 Let me first figure out when -- when was
 11 the 2015 CDA prepared?
 12 **A.** It would be towards the end of 2014.
 13 **Q.** Okay. And since the break as you -- you
 14 refreshed your recollection that your visit to
 15 Enerbase to meet with Shawna and Stu and Scott was
 16 in December of '14, 2014?
 17 **A.** Yes, I believe so.
 18 **Q.** Okay. So when you visited in December of
 19 2014, did you talk at all about Enerbase signing up
 20 for the 2015 CDA?
 21 **A.** I believe that would have been the purpose
 22 of the meeting.
 23 **Q.** Okay. Did you tell Enerbase that the
 24 funding would be decreased in 2015?
 25 **A.** I don't believe so.

1 **Q.** Why not?
 2 **A.** I'm not sure exactly to the point what
 3 exactly we talked about during that meeting besides
 4 reviewing the CDA. If there was a funding
 5 difference between '14 and '15, it would have
 6 already been realized by the customer.
 7 **Q.** But we're talking about December of '14,
 8 so the CDA for 2015 didn't -- did not yet take
 9 effect, did it?
 10 **A.** It takes effect when it's signed, so if
 11 they haven't signed it, no, it wouldn't have taken
 12 effect.
 13 **Q.** I see. So a customer could sign the 2015
 14 CDA in December and it takes effect as soon as the
 15 signature is on -- on the page?
 16 **A.** As soon as we can get the discounts into
 17 our system.
 18 **Q.** Okay. So getting back to this December
 19 four -- 2014 meeting with Enerbase, at that time
 20 was Troy Brezden still dealing with the account or
 21 had the changeover to you occurred?
 22 **A.** The changeover occurred.
 23 **Q.** Okay. Was that your first meeting with
 24 those three?
 25 **A.** I believe it was.

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1 **Q.** Okay. At that meeting did they complain
 2 at all about Troy's performance?
 3 **A.** I don't know if they specifically did.
 4 With the factors between the -- the shell deposit,
 5 the -- the scanning system, you know, they may have
 6 brought up the glide issue once again, but I can't
 7 be certain. I just remember the scan issue and the
 8 shell deposit in the forefront of my mind.
 9 **Q.** Did they complain about Troy's lack of
 10 responsiveness to their concerns?
 11 **A.** I can't be sure specifically.
 12 **Q.** Well, what do you recall generally?
 13 **A.** I recall reviewing the -- it would be the
 14 2015 program with them, trying to respond to some
 15 of their concerns like the shell credits and the
 16 scanning issue.
 17 **Q.** Who was the -- the Northern Bottling
 18 salesperson directly responsible for servicing the
 19 Enerbase stores?
 20 **A.** The person taking the orders that would be
 21 our sales rep to Enerbase?
 22 **Q.** Yes.
 23 **A.** At that time, I'm not sure. It could have
 24 been, you know, a couple different people. Those
 25 positions turn.

1 Q. Well, let's just kind of -- if we can --
2 if you can identify for me each of the persons who
3 has served as the sales rep for the Enerbase
4 account beginning in fall of 2014 rolling forward
5 to the present.

6 A. It's no one that we currently have on
7 staff. If I recall correctly, I believe his name
8 was Tony Sanders. He's not with us anymore. I
9 think he was servicing the accounts at that
10 particular time, but I don't know rolling back and
11 forth who --

12 Q. Okay.

13 A. -- would service those accounts. They
14 moved from sales rep to sales rep, depending on
15 routing.

16 Q. So then after the fall of 2014, if
17 Mr. Sanders was, in fact, the guy who was
18 servicing, who took his place?

19 A. I'm not sure.

20 Q. Well, you were responsible for the
21 Enerbase account beginning in December of '14. You
22 don't know who -- who took over as the sales rep on
23 that account?

24 A. I was responsible for making the chain
25 account call. The operation still fell under

1 know.

2 Q. But there was dissatisfaction with -- by
3 his superiors with his performance?

4 A. There was dissatisfaction by -- I can't
5 speak for Troy Brezden. You know, when I saw him,
6 of course, he didn't directly report to me, I
7 didn't see a lot in him.

8 Q. What were the performance problems that
9 you identified with Mr. Sanders?

10 A. It would have been score card issues, you
11 know, not passing score cards, not having proper
12 point-of-sale material up maybe or accuracy.

13 Q. What about making sure the product was in
14 date as opposed to being out of date?

15 A. That would be the sales rep's
16 responsibility.

17 Q. Okay. Well, did Mr. Sanders have problems
18 with that?

19 A. I'm not sure.

20 Q. How about responsiveness to Enerbase?

21 A. Again, I wouldn't be sure of that. He
22 didn't --

23 Q. Do you --

24 A. -- report to me.

25 Q. -- recall whether Shawna or Scott or Stu

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1 Mr. Brezden, so they would assign the rep.

2 Q. Is that allocation of responsibility still
3 in place today?

4 A. Yes.

5 Q. Okay. So Mr. Brezden assigns the sales
6 rep to this account, to the Enerbase account?

7 A. He has overall primary responsibility for
8 the routing in the Minot area.

9 Q. Was Mr. Sanders replaced because of
10 dissatisfaction with his performance as a sales rep
11 for Enerbase?

12 A. I'm not sure. Any of his departure or why
13 he left or -- would have been an issue in the Minot
14 division.

15 Q. Was he fired?

16 A. I don't know.

17 Q. Well, was he let go involuntarily?

18 A. I'm not sure, to be --

19 Q. Who -- who has that information?

20 A. Human resources would have that
21 information.

22 Q. What's your understanding?

23 A. From my recollection, that he wasn't
24 performing well and at some point he left. Whether
25 that was voluntarily or involuntarily, I don't

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1 raised any concerns with you in December of 2014
2 about whether or not Mr. Sanders was responsive to
3 their needs?

4 A. I don't recall.

5 Q. Do you have any general recollection that
6 they had a negative attitude towards Mr. Sanders'
7 performance?

8 A. Well, I think my recollection would be
9 going into that meeting they had some issues they
10 want brought to the table, overall negative
11 reflecting, so my job was trying to overcome those
12 issues.

13 Q. Okay. And those were the issues with the
14 shells, the scanning, the glides and the like?

15 A. Mm-hmm.

16 Q. Did you leave a copy of the two
17 thousand -- well, strike that.

18 Is it your recollection that you at least
19 talked about the 2015 CDA program with the Enerbase
20 people in December of 2014?

21 A. I believe we read through it and we went
22 through it page by page. I usually do with every
23 customer.

24 Q. Okay. And at the end of that meeting,
25 what did the Enerbase people say to you about that

1 program?

2 **A.** I don't believe they were presented to by

3 our competitors yet and they wanted to see

4 everybody's programs together, so they would need

5 to get back to me on -- when they saw the

6 competitors' programs.

7 **Q.** Did they identify the -- the decrease in

8 funding between 2014 and 2015 that we talked about

9 a few moments ago?

10 **A.** Not that I'm aware of.

11 **Q.** They hadn't looked at it that closely

12 to -- to identify that?

13 **A.** Could have, yeah.

14 **Q.** Do you recall whether they raised that

15 issue at any time after December 2014?

16 **A.** I believe we had a conversation at another

17 meeting when we were going down to the price per

18 unit and there was probably a couple cents

19 difference based on that pricing difference per

20 unit.

21 **Q.** And when did that meeting occur?

22 **A.** It would have been after the December

23 meeting, you know. There was back-and-forth,

24 several meetings, just pop-in and pop-outs.

25 **Q.** Well, now February of 2015 is when Shawna

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1 informed you that they were going in a different

2 direction; right?

3 **A.** Yep.

4 **Q.** So between December of '14 and February of

5 '15, how many meetings or contacts did you have

6 with Enerbase about their 2015 business?

7 **A.** There were several.

8 **Q.** Okay. What do you recall about those

9 contacts?

10 **A.** I remember being up at one of the stores

11 at one point and going through some planograms and

12 what planograms would look like for specific

13 programs and how that would overall affect their

14 funding level.

15 **Q.** At that point had Mr. Sanders been

16 replaced as the sales rep for Enerbase?

17 **A.** I'm not sure.

18 **Q.** By two -- February of 2015 had he been

19 replaced?

20 **A.** I'm not sure.

21 **Q.** Aside from the score card, does Northern

22 Bottling have any system for logging and keeping a

23 record of customer complaints?

24 **A.** I don't believe so. Not --

25 **Q.** None at all?

1 **A.** Individual complaints that would come to,

2 like, switchboard, are you --

3 **Q.** Well, just to Northern Bottling generally.

4 **A.** To my knowledge, we don't have a form or

5 spreadsheet to log individual complaints.

6 **Q.** Do you have -- let's talk about the time

7 period from 2014 forward. Do you present the

8 customer with any kind of survey to elicit from the

9 customer how it thinks Northern has performed over

10 the past year or -- or other period of time?

11 **A.** Usually part of the customer call would be

12 is there any issues, is there anything we can

13 improve on, you know, trying to find if there are

14 any issues. You know, that's a common question

15 we'd ask.

16 **Q.** That's a customer call done by whom?

17 **A.** Myself, the sales manager, the salesmen.

18 It's a -- it's a common question we ask as much as

19 we can.

20 **Q.** And how do you record or -- or log the

21 information?

22 **A.** Me personally? Sometimes I'll scratch

23 down a note and, you know, follow up with them if

24 it's something I can't answer right away.

25 **Q.** But there's no system in place at Northern

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1 to record all that information in a central place

2 or to -- to kind of gather customer feedback?

3 **A.** Not that I'm aware of, no.

4 **Q.** So you mentioned that you had multiple

5 meetings with Enerbase between December '14 and

6 February of 2015. Did you at one point present to

7 Enerbase a -- a CDA summary showing the discounts

8 that Enerbase would be entitled to receive if it

9 signed up for the 2015 CDA?

10 **A.** It's something I would usually use for

11 a -- a chain customer to break down options.

12 **MR. QUINN:** Let me ask the court reporter

13 to mark as Hillestad Exhibit 7 a two-page

14 document -- I'm sorry, three-page document with

15 Bates stamp numbers NB 0000131 through 133, and --

16 go ahead.

17 (Deposition Exhibit 7 was marked for

18 identification.)

19 **Q.** (MR. QUINN CONTINUING) Mr. Hillestad,

20 I -- I'm going to show you what's been marked as

21 Hillestad Deposition Exhibit 7. Can you identify

22 this as a true and correct copy of the 2015 CDA

23 summary that you presented to Enerbase reflecting

24 the discounts and funding that it would receive if

25 it signed that CDA?

1 **A.** Looks like something I would have
 2 presented, yes.
 3 **Q.** Okay. And -- and this reflects the
 4 funding that Enerbase would have received if it
 5 signed the 2015 CDA?
 6 **A.** It could reflect a multitude of options
 7 that they were asking. You know, part of those
 8 several meetings is where they were asking for
 9 different options, what would they look like, so I
 10 wouldn't be surprised if there's more than one of
 11 these floating around saying this is what that
 12 option looks like, this is what this option looks
 13 like.
 14 **Q.** So this particular one with the funding,
 15 the NCB shelf allocation discount relates to the
 16 14-shelf --
 17 **A.** I'd have to --
 18 **Q.** -- option?
 19 **A.** -- compare them, but I would think so.
 20 **Q.** Okay. So you also presented the -- the --
 21 the terms -- the CDA terms that Enerbase would have
 22 to agree to if it signed this; correct?
 23 **A.** Yeah. If they were to sign the CDA, we
 24 would have reviewed --
 25 **Q.** Okay.

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1 **A.** -- the terms.
 2 **Q.** Enerbase never signed this?
 3 **A.** If it's '15, I don't believe so.
 4 **Q.** Okay. Has Enerbase signed a CDA for 2016?
 5 **A.** No, they haven't.
 6 **Q.** Okay. So, to your knowledge, has Enerbase
 7 ever signed a CDA presented by Northern Bottling?
 8 **A.** I believe when they were being called on
 9 by Troy, they've signed all the previous CDAs we've
 10 presented to them.
 11 **Q.** Except for two thousand --
 12 **A.** '15.
 13 **Q.** -- fourteen?
 14 **A.** I would have to check, but I think they
 15 signed '14. It's '15 they didn't sign and '16 they
 16 haven't signed.
 17 **Q.** Okay. Now, you testified earlier that
 18 they had not signed 2014 or 2013. Are you changing
 19 your testimony?
 20 **A.** Yeah, I may have got confusion on the
 21 dates because --
 22 **Q.** Okay.
 23 **A.** -- without a calendar in front of me, I --
 24 **MR. QUINN:** Okay. I don't think we've
 25 received any pages that indicate that Enerbase has

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1 signed, Jim, so I'd just note that for those
 2 earlier years. If you can look and see whether or
 3 not there's anything there, I'd appreciate it.
 4 **Q.** (MR. QUINN CONTINUING) So if your
 5 recollection is correct that Enerbase signed the
 6 2014 CDA, then did Shawna, Scott and Stu recognize
 7 that the '15 -- 2015 CDA was going to have a
 8 significant drop in funding -- discount funding?
 9 **A.** We would have reviewed the cost per unit
 10 at one point.
 11 **Q.** Okay. And they were unhappy about that;
 12 correct?
 13 **A.** Well, anytime a price changes, a customer
 14 is usually unhappy.
 15 **Q.** Well, not a price decrease; would you
 16 agree?
 17 **A.** I can't speak for everybody, but I usually
 18 enjoy a price decrease.
 19 **Q.** Right. So it's a price increase that they
 20 wouldn't be happy about; right?
 21 **A.** Sure.
 22 **Q.** Okay. So how did you learn that Enerbase
 23 was going to stop purchasing products from Northern
 24 Bottling?
 25 **A.** It was the phone call from Shawna in

1 February.
 2 **Q.** To you --
 3 **A.** Yes.
 4 **Q.** -- personally?
 5 Okay. Was it just the two of you on the
 6 line?
 7 **A.** Yes, it was.
 8 **Q.** And what did she say to you?
 9 **A.** That was when she brought up that if there
 10 was any orders pending, could they stop them, and
 11 when I asked her why, it was -- I believe it was
 12 her words, the economic reasons.
 13 **Q.** Did she mention anything about the service
 14 issues too?
 15 **A.** I don't believe at that point.
 16 **Q.** Did you ask her?
 17 **A.** It -- it's something I would have asked.
 18 I would have tried to find out as much information
 19 as I could.
 20 **Q.** Well, after she told you to stop the
 21 pending orders, what did you say to her?
 22 **A.** I don't know my exact words. I probably
 23 asked her why, you know, what's going on.
 24 **Q.** Did you try to convince her to continue to
 25 purchase at least some products from Northern

1 Bottling?

2 **A.** I'm not sure if I made that distinction

3 between some and all. I would have tried to, you

4 know, again, convince her to purchase products from

5 us, but how in detail we got into it, I'm not sure.

6 **Q.** Did -- in -- in that first call at least,

7 did you indicate to her that Northern would be

8 prepared to offer an additional price discount in

9 order to keep Enerbase's business?

10 **A.** I don't believe so.

11 **Q.** So you didn't say anything at all about

12 the pricing question?

13 **A.** Any discount that I would have authorized

14 to offer would be on the CDA. Anything beyond

15 that, I'd have to get approval for.

16 **Q.** Okay. Did you ask her what the -- the

17 price differential was between this alternative

18 source and -- and Northern's?

19 **A.** I'm not even sure if she told me about the

20 alternative source on that phone call. We found

21 out at some point, but I'm not sure if it was on

22 that phone call.

23 **Q.** Okay. In that phone call, then, she just

24 said they were going in a different direction?

25 **A.** That's what I recall.

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1 **Q.** Did you think that she was going to stop

2 purchasing Pepsi products altogether?

3 **A.** I believe that was my first instinct, is

4 they would just not have Pepsi products at all in

5 the store.

6 **Q.** Did you ask her why?

7 **A.** I'm sure I would have asked her why and I

8 believe that's when she said the economic reasons.

9 **Q.** Did you ask her in that first call about

10 Coke's pricing?

11 **A.** On the -- on the phone call we had?

12 **Q.** Yeah.

13 **A.** I don't believe I would have. I'm not

14 sure, but I usually --

15 **Q.** Why not?

16 **A.** -- try not to talk about the competitors.

17 **Q.** Okay. You just -- you wouldn't even want

18 to know what the Coke pricing was?

19 **A.** It's the best practice that we want to

20 talk about our business. I mean we're up to date

21 on what our competitors are doing, but we're not

22 going to make a hand-by-hand comparison of --

23 **Q.** You mean --

24 **A.** -- our products.

25 **Q.** -- you don't -- if a customer has a

1 concern about pricing, competitive pricing, you

2 don't ask the price that they're getting from the

3 competitor that you would have to meet or beat in

4 order to get the customer's business?

5 **A.** If they would tell us that I'm getting

6 this product for X, you know, we would either

7 follow up, you know, Well, is that something you'd

8 be willing to tell us, or, Is that something you --

9 you're willing to share with us.

10 **Q.** But you did not do that during this first

11 call with Shawna?

12 **A.** I don't believe I did.

13 **Q.** Okay. So what did you do after you got

14 off the phone with Shawna?

15 **A.** I most likely called Bruce, Mr. Peterson.

16 **Q.** Do you recall what you said to him?

17 **A.** No, I don't.

18 **Q.** Well, this was a shocking development,

19 wasn't it?

20 **A.** It was.

21 **Q.** And nothing sticks out in your mind about

22 what it is that you said to Mr. Peterson after you

23 learned that a customer was going to basically kick

24 Northern Bottling out of its stores?

25 **A.** Not on that conversation. No, I'm sure it

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1 was relaying the information that I had at that

2 point.

3 **MR. QUINN:** Let me ask the court reporter

4 to please mark as Hillestad Deposition Exhibit 8 a

5 three-page document with Bates stamp numbers NB TB

6 0002006 through 8.

7 (Deposition Exhibit 8 was marked for

8 identification.)

9 **Q.** (MR. QUINN CONTINUING) Mr. Hillestad, I'm

10 going to hand you what's been marked as Deposition

11 Exhibit 8. It purports to be a -- a series of

12 e-mails, so this is a group exhibit. Would you

13 take a look at this, and -- and I'm happy to report

14 that this time the font is a little larger, so

15 hopefully it will be easier to read.

16 **MR. RAGAIN:** You ready?

17 **THE WITNESS:** Oh, yes.

18 **Q.** (MR. QUINN CONTINUING) Yeah, I'm sorry.

19 I thought you were reading.

20 Do you recognize Exhibit 8 as true and

21 correct copies of a series of e-mail exchanges

22 between you and Mr. Brezden and also Mr. Peterson

23 and Langer Gokey?

24 **A.** I do.

25 **Q.** Okay. So turn to the last page, because I

1 think these pages are in reverse chronological
 2 order. This is an e-mail from Troy Brezden to --
 3 it looks like to a distribution list. Did you
 4 receive a copy of this from Mr. Brezden on
 5 February 14 at 4:06 a.m.?
 6 **A.** That's what it looks like.
 7 **Q.** Okay. Did you talk to Mr. Brezden about
 8 his message?
 9 **A.** I'm sure I did at one -- at some point.
 10 **Q.** What do you recall?
 11 **A.** I don't think I did it by phone when I was
 12 on vacation. I'm sure I talked to him when I came
 13 back. I believe the only person I talked to when I
 14 was on vacation was Mr. Peterson.
 15 **Q.** Bruce Peterson?
 16 **A.** Yes. Yep.
 17 **Q.** Okay. So did you have a conversation with
 18 Shawna Chilcoat when you were on vacation then?
 19 **A.** Just that one when she called me at the
 20 airport --
 21 **Q.** Okay.
 22 **A.** -- that first phone call.
 23 **Q.** To tell you that -- that Enerbase was
 24 going in a different direction?
 25 **A.** Yes.

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1 **Q.** Okay. So -- so when you got this e-mail
 2 from Mr. Brezden, that did not come as a surprise
 3 to you?
 4 **A.** No.
 5 **Q.** And did you then compose your own e-mail
 6 to him, Mr. Peterson and Mr. Gokey the next day?
 7 **A.** I did.
 8 **Q.** Okay. And that's the e-mail that's
 9 reflected on 2006 and 2007; correct?
 10 **A.** That's correct.
 11 **Q.** In -- at the beginning of this you counsel
 12 the others that it would be -- you did not think
 13 any rash or punitive action towards Enerbase
 14 would -- strike that.
 15 You say in the first sentence, "After
 16 considering Enerbase's decision to purchase their
 17 CSD and NCBs auto from Coremark, I believe any rash
 18 or punitive action toward Enerbase would ultimately
 19 in the long run prove a mistake."
 20 Why did you say that?
 21 **A.** I was concerned about someone making an
 22 emotional knee-jerk reaction and was more concerned
 23 about the long-term prospect of the account.
 24 **Q.** Was anyone suggesting that Northern take
 25 punitive action towards Enerbase?

1 **A.** I don't believe so.
 2 **Q.** So why did you -- you feel the need to --
 3 to caution everybody against taking any rash or
 4 punitive action?
 5 **A.** I'm a cautionary person. I try to cover
 6 all my bases.
 7 **Q.** And in this e-mail, in the middle of it
 8 you say -- well, first of all, you -- you -- you
 9 identify Core-Mark as the source of Enerbase's
 10 products. Do you see that?
 11 **A.** I do.
 12 **Q.** So how did you get that information?
 13 **A.** I must have been told. Shawna could have
 14 told me on that first phone call and I just didn't
 15 remember.
 16 **Q.** Okay. But does this refresh your
 17 recollection that she did or -- or not?
 18 **A.** If I put it in this e-mail, it would have
 19 been after the initial conversation with Shawna, so
 20 she must have told me.
 21 **Q.** Okay. And you say in the middle, "In the
 22 short term I believe we should ask Enerbase if we
 23 could review the data they used in coming to their
 24 decision, most likely they may not be taking in all
 25 factors of the DSD system and its value."

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1 Why did you say that?
 2 **A.** If they made an economical decision -- or
 3 decision, which is what they said, we wanted -- or
 4 I wanted to make sure that they had the correct
 5 data to make that decision, where they take in
 6 everything into account, where they've taken the
 7 shell deposit into account, where they've taken in
 8 other service aspects. We wanted to make sure they
 9 were using correct data in making their conclusion.
 10 **Q.** So what did you do to try to convey that
 11 information to Enerbase?
 12 **A.** We asked for what data they had.
 13 **Q.** When did you do that?
 14 **A.** It would have been after I came back from
 15 vacation at a meeting.
 16 **Q.** How long?
 17 **A.** After I came back from vacation?
 18 **Q.** Yes.
 19 **A.** I don't know, but I bet it would be --
 20 would have been pretty shortly after I came back.
 21 **Q.** And did you get a face-to-face meeting
 22 with Shawna?
 23 **A.** I'm not sure if the first or second one.
 24 I know at some point I did.
 25 **Q.** How -- what was the general time frame? A

1 month later or less than that?

2 **A.** It would have been less.

3 **Q.** And what happened when you asked her for

4 that data?

5 **A.** I don't believe they were willing to

6 provide it.

7 **Q.** Who's they?

8 **A.** Enerbase.

9 **Q.** But did Shawna -- was anyone else besides

10 Shawna at the meeting with you?

11 **A.** I believe it was just Shawna.

12 **Q.** Okay. Did she refer at all to her boss?

13 **A.** I'm not sure.

14 **Q.** Her boss was Tony Bernhardt?

15 **A.** Yes.

16 **Q.** Okay. Did you try to provide information

17 to Shawna or anyone at Enerbase regarding the

18 advantages of DSD or the other discounts that

19 Northern would be willing to provide in order to

20 retain the business?

21 **A.** I'm sure I would have referred back to our

22 CDA. I know at one point we built a spreadsheet

23 making certain assumptions of what we believed

24 their pricing from Core-Mark would be, but that was

25 based on assumptions because, like I said, they

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1 wouldn't tell us what numbers they were using, so

2 we had to make certain assumptions.

3 **Q.** Did you offer any discounts to Enerbase?

4 And the time period I'm looking at right now is

5 February, March, April, say, of 2015. Did you

6 offer any additional price discounts to Enerbase to

7 recapture the business beyond what was in the 2015

8 CDA?

9 **A.** I'm not sure if I did. It would be

10 something I would have to have authorization for,

11 so --

12 **Q.** Well, did you propose that Northern offer

13 some additional discounts in order to win back the

14 business?

15 **A.** I'm not sure.

16 **Q.** You're not sure?

17 **A.** I'm not sure if I proposed we give them

18 additional discounts. I'm sure --

19 **Q.** You can't remember --

20 **A.** -- there was a lot of ideas floating

21 around.

22 **Q.** You can't -- well, let's just broaden the

23 time frame. At any point during the first six

24 months of 2015, did you personally ever propose

25 that Northern Bottling offer Enerbase some

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1 additional price incentives in order to recapture

2 the business that was apparently going elsewhere?

3 **A.** I don't know for a fact or when that would

4 happen. You know, one of our common tools we use

5 is to go back to Pepsi or DPSG and ask is there

6 additional funding that you could allocate that

7 would help us out with that, so that is a common

8 tool we use.

9 **Q.** Did you use that or did you approach Pepsi

10 for additional funding in the first six months of

11 2015 to try to recapture the Enerbase business?

12 **A.** I don't know if it was in the first six

13 months, but I do remember a conversation with Larry

14 Bowers about possibly getting some additional

15 funding.

16 **Q.** That was sometime in 2015?

17 **A.** Yes.

18 **Q.** Okay. And what was Mr. Bowers' reaction?

19 **A.** I believe he had to run it up his chain of

20 command, just like anybody else would, so I

21 don't -- he never gave us a definite answer.

22 **Q.** Was he encouraging in his conversations

23 with you?

24 **A.** Larry's professional enough where he -- he

25 won't commit to anything without knowing the answer

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1 to and without him committing. He was leaving the

2 issue open.

3 **Q.** But did he tell you that he would take

4 back your request?

5 **A.** Yes.

6 **Q.** What is it that you actually requested in

7 the way of funding from Mr. Bowers?

8 **A.** I believe we requested the difference from

9 what we believed they were getting the product

10 from -- from Core-Mark to what our CDA rates were.

11 **Q.** And how did you determine what -- what you

12 thought they were getting from Core-Mark?

13 **A.** It was assumptions.

14 **Q.** What -- what were the assumptions that you

15 made?

16 **A.** At their net pricing or their base

17 pricing.

18 **Q.** And what -- what -- what net -- what

19 assumptions did you make? In other words, what

20 numbers did you use in -- in trying to calculate

21 the price that Enerbase was getting from Core-Mark

22 as opposed to the price that Northern Bottling was

23 offering Enerbase?

24 **A.** We heard that it was around that \$20 mark

25 and that was through different customers and just

1 through street conversations.
 2 Q. The \$20 mark for what product?
 3 A. 20-ounce CSD.
 4 Q. 24 to a case?
 5 A. 24 to a case, yes.
 6 Q. Do you recall the time frame when you
 7 requested funding?
 8 A. No, I don't.
 9 Q. Okay. Now, did you at any point in 2015
 10 recommend or suggest that whether or not Northern
 11 got funding, it should try to lower its price in
 12 order to recapture any of the Enerbase business?
 13 A. I'm sure it was one of the options that
 14 were brought up by somebody at some point. I don't
 15 recall if it was my idea, but I'm sure it was one
 16 of the options we explored.
 17 Q. Well, did you support that idea?
 18 A. I usually don't support that idea. I
 19 believe in equity throughout our customer market,
 20 so it's not something that I would support off the
 21 top of my head unless someone made a very good
 22 argument, which again I don't recall.
 23 Q. But in the case of Enerbase, did you
 24 support it?
 25 A. Initially I believe I didn't and then --

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1 Q. When did you?
 2 A. Maybe farther down the line, and, again, I
 3 can't --
 4 Q. In 2015?
 5 A. Could have.
 6 Q. Is it your best recollection that at some
 7 point in 2015 you supported the idea of offering
 8 additional price discounts in order to recapture
 9 Enerbase business?
 10 A. It would have been towards the end of
 11 2015, early '16.
 12 Q. What changed your mind about offering a
 13 price discount to Enerbase?
 14 A. From what I recollect is in early 2016
 15 when they agreed to bring our products back in, we
 16 agreed to reduce the 20-ounce CSD cost, but their
 17 non-carb costs would increase. And we showed them
 18 the difference between the CSD and the non-carb and
 19 what they netted out to a dollar value based on
 20 sales, and they chose to do the CSD discount.
 21 Q. When you had this -- this -- strike that.
 22 So you -- you talked to Shawna on the
 23 phone sometime in February of 2015, and then you
 24 had several other meetings when you returned from
 25 vacation with Shawna to try to convince her to have

1 Enerbase let Pepsi back in; right?
 2 A. (Nods head.)
 3 Q. Is that correct?
 4 A. That's correct.
 5 Q. Okay. During the course of those
 6 meetings, did you ever ask her whether or not she
 7 was going to be able to get the full line of Pepsi
 8 products from Core-Mark or her -- her third-party
 9 supplier?
 10 A. That's something I would have asked.
 11 Q. Okay. What was her response?
 12 A. I believe that is when she listed that she
 13 could get several products from Gator -- excuse me,
 14 Gatorade to Starbucks to CSD to some Rockstar
 15 products.
 16 Q. Well, but did she say she could get the
 17 full line of products?
 18 A. I'm not sure exactly what words she used.
 19 Q. Is it several? Is that -- that what you
 20 recall?
 21 A. Yes.
 22 Q. Did you say to her, Let us fulfill your
 23 Pepsi product needs that you're not getting from
 24 Core-Mark or whatever the other distributor was
 25 that Enerbase was using?

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1 A. It would have probably been one of the
 2 options on the table. I don't recall if we did
 3 that or when that happened.
 4 Q. At some point in time did you make that
 5 pitch?
 6 A. I'm not sure.
 7 Q. You're not sure?
 8 A. Yeah. I'm sure we floated several
 9 scenarios across the table to see if they were
 10 interested in any of them. Whether they were just
 11 ideas or they were commitments on our side, there
 12 were just a lot of idea exchanging going on at that
 13 point.
 14 Q. Did you ever actually put a proposal on
 15 paper to give them with respect to at least some
 16 Pepsi products or all the Pepsi products they
 17 weren't getting?
 18 A. I don't recall, but, again, I'm not sure.
 19 Q. Were you the point man in terms of trying
 20 to win back the Enerbase business?
 21 A. I was the communication, yes, so it was --
 22 between our company I would be the communication,
 23 and then Shawna on her side of the company would --
 24 she was on the communication.
 25 Q. Did you have a concern that Coke, KO in

1 your first page of your Exhibit 8, would capture
 2 additional self space -- shelf space from the
 3 Enerbase stores as a result of Northern Bottling
 4 being kicked out of that account?
 5 **A.** Yes, it would be one of my concerns.
 6 **Q.** What happened?
 7 **A.** They captured additional space.
 8 **Q.** That included products that Core-Mark
 9 could not supply to Enerbase?
 10 **A.** That's correct.
 11 **Q.** Okay. So did it surprise you that
 12 Enerbase would not purchase anything from Northern
 13 Bottling of Pepsi products, even those that it
 14 couldn't get from Core-Mark?
 15 **A.** Yes.
 16 **Q.** What do you think -- what's your
 17 understanding of what Enerbase's rationale was in
 18 refusing to buy anything from Northern Bottling
 19 after February of 2015 until 2016?
 20 **A.** Well, again, I can't speak for them, but I
 21 imagine it gave them a larger bargaining chip for
 22 the future.
 23 **Q.** Would you think it was also driven -- and
 24 I'm asking your understanding, of course. In your
 25 understanding was it driven by a deep

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1 dissatisfaction with the pricing and servicing that
 2 Northern Bottling had been supplying to Enerbase?
 3 **A.** I believe it was based on a dis --
 4 dissatisfaction of pricing and servicing.
 5 **Q.** So you understood certainly beginning in
 6 February of 2015 after Northern had been kicked out
 7 that you were going to need to address what you
 8 understood to be those concerns about pricing and
 9 service in order to get that account back; right?
 10 **A.** I understood that I would need to address
 11 their concerns, and if they covered those --
 12 pricing and service, I would have to address those,
 13 yes.
 14 **Q.** So you in this memo also suggested that
 15 Ener -- that Northern Bottling not try to remove
 16 the fountain equipment or the coolers that held
 17 Pepsi products in the Enerbase stores; right?
 18 **A.** That's correct.
 19 **Q.** And why did you make that suggestion?
 20 **A.** Because I was looking toward the future
 21 relationship, and I wanted to make sure that we
 22 exited on a good basis so we could enter back on a
 23 good basis.
 24 **Q.** Did everyone else at Northern Bottling
 25 agree with your position?

1 **A.** I don't recall any disagreements in
 2 initial -- again, I was on vacation during that
 3 week, so there was limited contact between me and
 4 the rest of the team.
 5 **Q.** But eventually the equipment was removed,
 6 wasn't it?
 7 **A.** Yes, it was, on their terms.
 8 **Q.** What do you mean on their terms?
 9 **A.** We worked with them to remove the
 10 equipment, so they let us know when they wanted us
 11 to pick up the coolers, the glides, the fountain
 12 units.
 13 **Q.** Did Enerbase tell you to take it out or
 14 did Northern Bottling say, We want to remove our
 15 equipment?
 16 **A.** We would have told them that we wouldn't
 17 allow our equipment to be used for another party's
 18 product and to make arrangements for it --
 19 **Q.** Okay.
 20 **A.** -- but it was on their time schedule.
 21 **Q.** So that -- that position was different
 22 than the one you originally advocated in your
 23 February 15 memo; right?
 24 **A.** No. It was the same position. My real
 25 advocacy was not to do it right away. It's to

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1 talk to them and work through them with that
 2 process.
 3 **Q.** Okay. And did that happen?
 4 **A.** Yes.
 5 **MR. QUINN:** Okay. All right. Let's take
 6 a break.
 7 **THE VIDEOGRAPHER:** This is the end of tape
 8 three. We're going off the record at 12:31.
 9 (Recessed at 12:31 p.m. and reconvened at
 10 1:35 p.m. Mr. Edison and Ms. Tucker are not
 11 present.)
 12 (Deposition Exhibits 9 through 12 were
 13 marked for identification.)
 14 **MR. QUINN:** Okay. We're back on the
 15 record. Mr. Hill --
 16 **THE VIDEOGRAPHER:** This is the start of
 17 tape four. The time is 1:35.
 18 **Q.** (MR. QUINN CONTINUING) We're back on the
 19 record, Mr. Hillestad. And all the admonitions
 20 and -- and suggestions that I gave to you this
 21 morning about if you don't understand a question,
 22 ask me to repeat it. If you don't hear it, same
 23 thing. Also continue to answer orally in response
 24 to the questions, and to the best of your ability,
 25 wait till I finish the question and then you go

1 ahead and answer. And if you can also do your best
2 to keep your voice up so the court reporter can
3 take down what you say and everyone can hear you,
4 that would be great too.

5 **A.** Absolutely.

6 **Q.** Fair enough? Okay.

7 Okay. I want to show you what the court
8 reporter has marked as Deposition Exhibit 9. Would
9 you take a look at that document, and after you've
10 had a chance to do so, can you tell me whether or
11 not you recognize this as an e-mail that you sent
12 to Troy Brezden on or about July 17, 2015?

13 **A.** That's what it looks like.

14 **Q.** Okay. This is your e-mail?

15 **A.** I believe so.

16 **Q.** Okay. This is an e-mail that addresses a
17 different customer, Superpumper; correct?

18 **A.** Mm-hmm.

19 **Q.** But if you look at the last sentence after
20 talking about a -- a problem with Superpumper
21 out-of-stock product, no outdoor point of sale, you
22 say, "Tony is becoming a real liability, and I
23 don't want to go down the same road as Enerbase
24 with a bad salesperson, and poor customer service."

25 When you wrote that, were you talking

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1 about Tony Sanders?

2 **A.** I believe so.

3 **Q.** Okay. So you regarded him as a bad
4 salesperson; correct?

5 **A.** From what this context is -- like I said,
6 I don't remember this particular occasion, why I
7 visited the store, but I obviously saw something I
8 didn't agree with and was not happy with it.

9 **Q.** But those are your words --

10 **A.** Mm-hmm.

11 **Q.** -- in describing Tony and the way he
12 serviced the Enerbase account as being a bad
13 salesperson and poor customer service; right?

14 **A.** Yep. That's correct.

15 **Q.** Okay. So does this particular document
16 refresh your recollection as to when it was that
17 Mr. Sanders left Northern Bottling?

18 **A.** Well, obviously he was still there at that
19 point, but it still -- I'm not sure when he started
20 and when he stopped, and -- like I said, it would
21 be in the HR file.

22 **Q.** Okay. Did he continue to serve the
23 Enerbase account from December of '14, when you
24 took over, and July of '15, when you wrote this
25 e-mail?

1 **A.** Well, at that time I don't believe we were
2 selling anything to Enerbase, so we had no sales
3 rep in there.

4 **Q.** Okay. So -- you're right. Let me
5 rephrase the question, then, and be a little more
6 precise. Did Tony Sanders continue to be the
7 salesperson serving Enerbase between December 2014
8 and February 2015 when Enerbase kicked Northern
9 Bottling out of the account?

10 **A.** I'm not a hundred percent sure if -- if he
11 was moved during that time period or if he stayed
12 on with servicing that account.

13 **Q.** Do you know if he was servicing that
14 account for at least a portion of that period
15 between December 2014 and February 2015?

16 **A.** No, I don't.

17 **Q.** Do you have any reason to believe that
18 Mr. Sanders' performance as a salesperson and
19 somebody providing customer service improved in any
20 way before you wrote this e-mail of July 2005 --
21 2015, rather?

22 **A.** It could have. I don't direct supervise
23 him, so he would have worked with his direct
24 supervisor on any performance improvement plan.

25 **Q.** But at least as of the date of this

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1 e-mail, your opinion of Mr. Sanders was that he was
2 a bad salesperson and provided poor customer
3 service to Enerbase; correct?

4 **MR. RAGAIN:** Objection. Asked and
5 answered. That's the third time. Go ahead and
6 answer it one more time.

7 **THE WITNESS:** My opinion at this
8 particular instance, I was obviously not happy with
9 something. That doesn't mean it was my opinion
10 from how long I knew him. I didn't know him very
11 well, but obviously from what I put here, I wasn't
12 very happy.

13 **Q.** (MR. QUINN CONTINUING) With Mr. Sanders?

14 **A.** With Mr. Sanders.

15 **Q.** Okay. Mr. Hillestad, I'm going to hand
16 you what the court reporter has marked as Hillestad
17 Deposition Exhibit 10. This purports to be an
18 e-mail from you to Bruce Peterson dated March 6,
19 2015, and attaching a letter from you to Tony
20 Bernhardt, general manager, Enerbase Cooperative,
21 with a CC to Shawna -- Shawna Chilcoat. Would you
22 take a look at this document, and after you've had
23 a chance to do that -- and by the way, this has
24 Bates numbers NB BP 0000164, dash, 165.

25 **A.** Okay.

1 Q. Mr. Hillestad, do you recognize this
2 particular group exhibit as a transmittal e-mail
3 that you sent to Bruce Peterson on or about
4 March 6, 2015, and enclosing this letter that you
5 sent to Mr. Bernhardt with a CC to Ms. Chilcoat?
6 A. I do. At the time of sending this to
7 Mr. Peterson, it was asking him to proof it. So I
8 don't know if this was the final letter that went
9 out because he would have sent me back an e-mail
10 with the final version.

11 Q. Okay. I will tell you that I haven't seen
12 any -- any response from Mr. Peterson or other
13 letter. But taking a look at this, the second
14 page, 165, that's your draft letter to
15 Mr. Bernhardt and Ms. Chilcoat?

16 A. Mm-hmm. Correct.

17 Q. Okay. Had you had any contact with Tony
18 Bernhardt personally as of the time you sent this?

19 A. Yes. You know, we've been -- we've known
20 each other through different customers and he was a
21 general manager at other co-ops, so I've talked to
22 him before.

23 Q. Was this the first time that -- that you
24 actually communicated with him regarding Enerbase's
25 decision to kick Northern Bottling out of the

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1 account?

2 A. I couldn't be a hundred percent if it was
3 the first time. I think there may have been a
4 phone conversation. I know his direction at one
5 point was to use Shawna as a communication point,
6 so we were respecting his wishes.

7 Q. Okay. So what was your purpose in sending
8 this letter to Mr. Bernhardt?

9 A. Well, I think one of, you know, the
10 purposes--I can speak for myself on that--was to
11 ensure him that we are communicating back and forth
12 between the customer, we are trying to resolve any
13 issues that may -- they may perceive and we're
14 trying to move forward.

15 Q. Okay. Now, I -- I understand that you're
16 not sure if this is precisely the final version of
17 the letter you sent out. Having looked at it, do
18 you recognize anything in this letter that you --
19 you eliminated from the final version?

20 A. I -- I don't recognize. I mean reading it
21 that -- just minutes ago was -- jogged my memory of
22 writing it, but at this point I had even forgotten
23 I had written it.

24 Q. Do you know whether you also showed a copy
25 of this to Langer Gokey?

1 A. I could have.

2 Q. What about Troy Brezden?

3 A. Most likely not. If I showed him a copy,
4 it was probably for proofing reasons, either
5 grammatically or something along those nature. So
6 usually Bruce Peterson or a couple other people in
7 the organization will proof my work.

8 Q. Is that right?

9 A. That's correct.

10 Q. Why -- why Mr. Peterson?

11 A. He helps me with some of my grammatical
12 issues. You know, I tend -- as I tend to talk
13 fast, I tend to write fast also, and that reflects
14 on some of the things I send on behalf of the
15 company, so we want to make sure we're presenting a
16 professional manner when we send out things with
17 our letterhead.

18 Q. So Mr. Peterson is your editor?

19 A. At some points he is.

20 Q. Okay.

21 A. Some points we use other people.

22 Q. Okay. Now in this particular letter in
23 the middle paragraph, you write in the second
24 sentence, It is also our understanding relayed by
25 your staff that we have fallen short on customer

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1 service in the past, and you and your staff's
2 research during the 2015 planning process has
3 indicated a greater profitability model utilizing
4 other beverage distributors.

5 Could you tell us what you had in mind
6 when you wrote that sentence?

7 A. Well, at some point during our
8 conversations, they would have brought up the
9 customer service issue, whether it be the glide
10 issue or another issue. The -- when it talks about
11 your staff's research during the 2015 planning
12 purposes, that was based on the assumptions we made
13 on their cost model of the product they were
14 getting from Core-Mark. So they believed they
15 thought they were going to make more money based on
16 the assumptions we made and the calculations we
17 made. We believed they would make more money with
18 us.

19 Q. How did you -- how did you go about making
20 your assumptions about the price that Enerbase was
21 paying Core-Mark for Pepsi products?

22 A. There are other customers serviced by
23 Core-Mark, you know, just through word of mouth and
24 this is what Core-Mark's offering to sell it for,
25 so we've heard it up and down the street.

1 Q. From other --
 2 A. Through customers.
 3 Q. -- convenience and gas customers?
 4 A. Mm-hmm.
 5 Q. Now, we looked this morning at an exhibit
 6 that showed the cold vault plans of various
 7 customers, and I -- I'll get it in front of you
 8 again. Exhibit 5, which sort of lays out the --
 9 the C&G customers and talks about who their ware --
 10 warehouse distributors are. Do you recall looking
 11 at that exhibit this morning?
 12 A. I do recall.
 13 Q. Now, there are other customers on this
 14 list that used Core-Mark as their warehouse
 15 distributor, you know, in addition to Enerbase;
 16 right?
 17 A. That's correct.
 18 Q. So, for example, FU Plaza Cenex, Cenex
 19 Harley's appear -- maybe not -- yeah, Cenex
 20 Harley's used Core-Mark, is that right, or Cenex
 21 Parshall also used Core-Mark?
 22 A. Cenex Harley's is Farner-Bocken --
 23 Q. Okay.
 24 A. -- Bismarck --
 25 Q. I misread that.

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1 A. -- and Cenex C-store Corner Express, which
 2 is Enerbase, is Core-Mark, if you read right below
 3 it.
 4 Q. But how about FU Plaza Cenex above Cenex
 5 Harley's?
 6 A. Oh, that's Farmers Union Plaza Cenex and
 7 that is Core-Mark.
 8 Q. Okay. And then down lower there's Cenex
 9 C-store Parshall?
 10 A. Cenex C-store Parshall has Core-Mark, yes.
 11 Q. Okay. And then I think even lower there's
 12 Plaza Makoti C-store?
 13 A. Yes. Core-Mark.
 14 Q. Uses Core-Mark also.
 15 Have any of those other customers that use
 16 Core-Mark as their warehouse distributor ever
 17 actually kicked Northern Bottling out of the
 18 account entirely?
 19 A. No. They have indicated to us that
 20 they've been approached by Core-Mark to buy
 21 20-ounce Pepsi products at a lower price, and we've
 22 explained the benefits of our CDA programs and
 23 they've chose to stay with us.
 24 Q. Why do you believe that Enerbase actually
 25 kicked Northern Bottling out of the account but

1 these other Core-Mark customers did not?
 2 A. Well, I can't --
 3 MR. RAGAIN: Objection to the form. Calls
 4 for speculation. Go ahead.
 5 Q. (MR. QUINN CONTINUING) I'm just asking
 6 for your belief or understanding.
 7 A. I can't speak to Enerbase's motivational
 8 needs. You know, from what they've told us,
 9 they're a larger chain, so they have probably more
 10 leverage than other independents, like the ones you
 11 noted here. Gives them a little more scale.
 12 Q. Did any of those other Core-Mark
 13 distribution customers ever threaten to kick
 14 Northern Bottling out of the account?
 15 A. Yes.
 16 Q. Which ones?
 17 A. I believe Cenex C-store in Parshall, and
 18 that was, again, on a pricing issue where they
 19 believed they could get lower pricing. And after
 20 we showed them the benefits of our program, they
 21 chose not to do so. And I believe that is the only
 22 one off the top of my head I can think of.
 23 Q. So in the case of Parshall, did -- did
 24 Northern Bottling actually lower the price that it
 25 was charging for Pepsi products?

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1 A. If I recall correctly, we signed them up
 2 on our larger CDA program so they could take
 3 advantage of the additional discounts to lower
 4 their price.
 5 Q. So they -- they signed up for your -- what
 6 year was this, by the way?
 7 A. I believe it was last year. This
 8 particular schedule of cold vault space doesn't
 9 have an update week of, and this is a living
 10 document, it gets updated all the time --
 11 Q. Right.
 12 A. -- so I'm not sure exactly what time frame
 13 this is.
 14 Q. But it would have been sometime in 2015 or
 15 thereabouts?
 16 A. I believe so, yes.
 17 Q. Okay. So in -- in -- in the case of
 18 Parshall, by presenting your program you were able
 19 to keep the customer?
 20 A. And gain additional space, yes.
 21 Q. And gain additional space. But in the
 22 case of Enerbase, you get kicked out?
 23 A. That's correct.
 24 Q. And do you believe that service issues,
 25 pricing issues were factors in Enerbase's decision

1 to actually not let Northern Bottling supply any
2 product?

3 **A.** I believe Enerbase thought they were.

4 **Q.** Okay.

5 **A.** And it was an objection that we had to
6 overcome.

7 **Q.** Okay. So after you sent the -- the
8 letter -- well, strike that.

9 Let me just try to pin it down. Is it
10 your recollection that sometime in March 2015, you
11 sent a letter to Mr. Bernhardt that was the same or
12 substantially the same as the letter attached to
13 Exhibit 10?

14 **A.** I imagine it would be similar. I don't
15 think a whole lot of changes would be made.

16 **Q.** No substantive changes?

17 **A.** I can't speak to that without seeing, you
18 know, a final version, but --

19 **Q.** Did you show a copy of your letter to
20 Mr. Langer Gokey?

21 **A.** I'm not sure if he got a copy, you know,
22 through e-mail or if he was personally in the
23 building.

24 **Q.** Okay. So did you hear from anyone at
25 Enerbase after you sent this letter?

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1 **A.** No, we did not.

2 **Q.** So what did you do next in -- in
3 connection with your efforts to try to win back
4 Enerbase as a customer?

5 **A.** We kept communication lines open -- or open
6 between us and Shawna and then also the store
7 managers.

8 **Q.** So what did you do to -- in that regard?

9 **A.** We would still include them and we would
10 show them our new products, you know, this is
11 what's coming out. We would give them samples.
12 Take any feedback they have. Just kind of tried to
13 keep them in the loop of what's happening in the
14 market.

15 **Q.** Did you -- and let's put a time frame on
16 it -- from March to roughly September of 2015 make
17 any efforts to try to convince Enerbase to purchase
18 the -- the new innovation products from Northern
19 Bottling?

20 **A.** We did not offer to sell them the
21 innovation products without a program or CDA. We
22 wouldn't be able to, but we did give them random
23 samples just so they knew what was happening in the
24 market.

25 **Q.** Why would you not be able to sell them

1 innovation products without a CDA?

2 **A.** Because it would be unfair to the rest of
3 our customer base to exclude parts of the CDA
4 program only for certain customers.

5 **Q.** But you wouldn't even sell them the
6 products at wholesale price?

7 **A.** That would have to be a decision made, you
8 know, above -- above me. We never offered it -- I
9 never offered it, I should say.

10 **Q.** Did you ever make any suggestion
11 internally at Northern Bottling about offering
12 Enerbase the innovation products at wholesale --

13 **A.** I'm not --

14 **Q.** -- during that time period, March through,
15 let's say, September, October of 2015?

16 **A.** I couldn't be sure of that. There's a lot
17 of ideas that go back and forth that some hit the
18 wall, some don't.

19 **Q.** Did you think it would be a good idea to
20 try to do that?

21 **A.** I personally believe in the equitability
22 we offer the rest of our customers and the benefits
23 of the program, so I personally don't think it's a
24 good idea, but, again, I can only speak for myself.

25 **Q.** But that's kind of an all-or-nothing

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1 approach, isn't it?

2 **A.** Somewhat.

3 **Q.** And that was the approach that you took
4 with Enerbase?

5 **A.** No. We tried, I guess, multiple
6 approaches, several approaches, but we couldn't
7 reconcile it in our organization to offer somebody
8 else something different than what we weren't
9 willing to offer all the customers.

10 **Q.** Well, this is what I don't understand and
11 maybe you can help me. Why is it that you would
12 not offer to Enerbase some of the new innovation
13 products, for example, some Mountain Dew® Kickstart
14 products, at wholesale price without any discount
15 in order to get the foot -- get Northern Bottling's
16 foot back in the door at Enterprise -- Enerbase?

17 **A.** Well, again, this is my personal opinion,
18 but when you just offer part of the portfolio,
19 there's a scale consideration. If we just stop our
20 truck to drop five cases here and there, we're
21 going to lose money on that stop just based on our
22 overhead. So there is --

23 **Q.** Did you actually do any economic
24 calculation to figure out whether you would make
25 money if you offered to deliver to Enerbase at

1 wholesale price all of the Pepsi products that it
2 was unable to get from Core-Mark?
3 **A.** We have minimum delivery standards and
4 those are based on calculations -- profitability
5 calculations, so it was a question of whether we
6 would go against our delivery standards, again, for
7 every other customer and make an exception for
8 Enerbase or to adhere to them.

9 **Q.** Well, let's talk about 2015 after Enerbase
10 kicks Northern Bottling out of the account.

11 **A.** Mm-hmm.

12 **Q.** What were the delivery standards that
13 Enerbase had to meet in order to buy product from
14 Northern Bottling at wholesale price?

15 **A.** If we were to offer that, or any customer,
16 the delivery, it is based on the package they
17 order. So, for example, our minimum drop is
18 20 cases of cans or 10 cases of bottles. So if
19 they buy 10 cases of bottles, they can order
20 whatever else they want as long as they meet one of
21 those minimums.

22 **Q.** So is it your testimony that during 2015
23 Northern Bottling never offered to Enerbase a
24 program at wholesale price to supply Pepsi products
25 that Enerbase was unable to get from Core-Mark?

1 the Pepsi products that it was unable to get from
2 Core-Mark?

3 **MR. RAGAIN:** Object to the form. Go ahead
4 and answer.

5 **THE WITNESS:** I do hundreds of proposals
6 on a monthly basis. No, I don't remember one
7 particular proposal.

8 **Q. (MR. QUINN CONTINUING)** Okay. Do you have
9 any reason to believe that you actually did make an
10 offer like that to Enerbase?

11 **A.** I don't really have any reason to believe
12 I did or did not.

13 **Q.** To make an offer like that, would you need
14 to get the approval of Mr. Peterson or Mr. Gokey?

15 **A.** I would at a minimum need to get the
16 approval of Mr. Peterson.

17 **Q.** Did you ever ask for approval to do that?

18 **A.** I don't recall so.

19 **Q.** Okay. Now, when Enerbase kicked Northern
20 Bottling out of the account in February of 2015, it
21 also lost access to the Dr Pepper Snapple Group
22 products that it was purchasing from Northern;
23 right?

24 **A.** I don't understand the question.

25 **Q.** Okay. Northern Bottling supplied Enerbase

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1 **A.** I personally don't remember that.

2 **Q.** Is there anything that you could consult
3 to determine whether an offer like that was made?

4 **A.** If one was made, it would be in our
5 Enerbase files which I believe was all turned over.

6 **Q.** And -- and you were the point person for
7 communications with Enerbase in 2015; right?

8 **A.** That's correct.

9 **Q.** So if you don't remember doing it, it
10 wasn't done?

11 **A.** Well, I don't remember a lot of stuff. If
12 you -- if you ask me what I did last week, I'm
13 going to forget half of it. I have to consult my
14 calendar, consult my e-mail and my multiple notes
15 that I take to remind me of stuff.

16 **Q.** Right. But losing Enerbase as a customer
17 was a big deal for you, wasn't it?

18 **A.** Losing any customer is a big deal for us.

19 **Q.** Well, Enerbase in particular, though;
20 right?

21 **A.** Any customer is a big deal for us.

22 **Q.** Okay. So it was a big deal to lose
23 Enerbase. And are you saying now that you don't
24 remember whether you ever proposed to Enerbase
25 supplying Enerbase with -- at wholesale price all

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1 with products like Dr Pepper prior to February of
2 2015, didn't it?

3 **A.** That's correct.

4 **Q.** Okay. Now, when Shawna Chilcoat told you
5 that Northern Bottling was out of the Enerbase
6 account, did that also mean that Northern Bottling
7 stopped delivering Dr Pepper products as well?

8 **A.** We stopped delivering all products per
9 their request.

10 **Q.** Including Dr Pepper products?

11 **A.** That's correct.

12 **Q.** And what Dr Pepper products was Northern
13 delivering to Enerbase at the time it was kicked
14 out of the account?

15 **A.** Are you referring to Dr Pepper trademark
16 in general or the whole DPSG line?

17 **Q.** The DPSG line.

18 **A.** So that would have been products like
19 Dr Pepper, Sunkist, A&W, Squirt. I can't recall
20 every single product they had, but those are the --
21 the big ones that I remember off the top of my
22 head.

23 **Q.** And which of those products was Enerbase
24 able to purchase from Core-Mark?

25 **A.** Dr Pepper and Diet Dr Pepper.

1 Q. Did Enerbase find any source for the other
2 Dr Pepper -- DPSG trademark products that Northern
3 had distributed?

4 A. I'm not sure if they found a source, but
5 they didn't, to my knowledge, buy any and bring it
6 in from another source.

7 Q. Do you know where Core-Mark got the
8 Dr Pepper products that it delivered to Enerbase
9 after February of 2015?

10 A. We know where they were manufactured based
11 on the production codes on the bottle.

12 Q. Where was that?

13 A. I would have to consult with our
14 transshipping documents.

15 Q. Do you remember?

16 A. Not the Dr Pepper in particular. I
17 believe the Pepsi -- one of the sites were coming
18 out of Florida. Again, I can't be sure on this. I
19 think another site was coming out of Illinois, but
20 I'd have to check for that.

21 Q. So you'd have to look at the records,
22 the -- the --

23 A. Yes.

24 Q. -- production codes on the products to
25 figure out what the source of those was?

1 then turning them in to our office staff who then
2 in turn -- I guess I'm not too sure what the
3 correct word is, but would make a claim of
4 transshipping. So my extent was getting the codes
5 off the bottles, documenting them and then sending
6 them off to Mr. Peterson.

7 Q. How did you get those codes?

8 A. You go in the store and you look at them
9 and write them down on a piece of paper.

10 Q. Or take a picture?

11 A. Yes. But I usually -- I think I've tried
12 to take pictures, and they're so small that unless
13 you -- it's in the -- see it in the right light,
14 it's hard to get the codes.

15 Q. Okay. So after February of '15 until --
16 well, just -- let's just take the rest of the year
17 2015, who at Northern had the responsibility to go
18 in these Enerbase stores to get the codes?

19 A. We do the initial -- I'm not sure what the
20 correct word -- discovery and turn that in to
21 trans -- the transshipping people at Pepsi, and
22 then they're supposed to, from my understanding,
23 send investigators into those stores on a
24 pre-described basis to ascertain how many cases are
25 there.

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1 A. The manufacturer, yes.

2 Q. Okay. Did you have any contact with the
3 Dr Pepper representative for Northern Bottling
4 after Enerbase made its decision to kick Northern
5 out of the account?

6 A. I didn't have a whole lot of contact with
7 them. Mr. Peterson would have talked to Jim
8 DesLauriers, who is our Dr Pepper rep.

9 Q. He was the point man for --

10 A. Yeah. He was --

11 Q. -- Dr Pepper?

12 A. -- the point and he's who we would have
13 reported the codes to.

14 Q. And did Bruce Peterson handle
15 communications on behalf of Northern with
16 Dr Pepper?

17 A. It would go between usually Mr. Peterson
18 and I. I didn't handle much communications
19 regarding transshipping with Jim. I think
20 Mr. Peterson did that or he either referred
21 Mr. Peterson to someone else.

22 Q. Did you handle any communications about
23 transshipping with any Pepsico personnel?

24 A. The extent of that is pretty much
25 producing the codes, finding what the codes are and

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1 Q. And then after that, once that
2 determination is made, assess fines and -- and pay
3 the amount of fines to Northern Bottling; right?

4 A. I believe how that's working, yeah.

5 Q. Okay. Are you aware of any instance at
6 all where Northern Bottling did not receive a fine
7 in connection with a discovery of transshipment of
8 Pepsi product?

9 A. I wasn't involved at all in -- if we got
10 the fines or submitting the transshipment
11 documentation. My extent was getting the codes
12 and -- and sending them off to Mr. Peterson.

13 Q. Did you ever attempt to do any
14 investigation yourself regarding these Core-Mark
15 shipments to the Enerbase stores?

16 A. Yes. When we weren't sure who was
17 bringing the product, we had to make sure it was
18 Core-Mark so we could relay that, so we -- there
19 were several instances where we followed the
20 Core-Mark truck around to witness them take Pepsi
21 off their truck.

22 Q. Okay. Now, it -- you testified this
23 morning Core-Mark delivers a whole variety of
24 products to these Enerbase stores and other
25 customers in Northern's territory; right?

1 A. Correct.

2 Q. So was it your understanding they just

3 used some additional space on the trucks to include

4 whatever beverage products Core-Mark could come up

5 with?

6 A. I'm not sure what -- how their routing or

7 model works with their particular deliveries. I

8 know that they were coming off the trucks as we

9 witnessed on a couple occasions.

10 Q. Have you ever received from any of these

11 customers that you identified, either in Enerbase

12 or the couple of customers you identified this

13 afternoon using Core-Mark -- have you ever seen any

14 agreements or contracts between Core-Mark and those

15 customers?

16 A. We've had other customers show us their

17 price book where it lists what's available and then

18 the price to the customer.

19 Q. Okay. Which customers have done that?

20 A. I believe that was Cenex in Parshall.

21 Q. Okay. Parshall; right?

22 A. Parshall, yes.

23 Q. Okay. How about Enerbase? Has

24 Enerbase --

25 A. No.

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1 Q. -- they've never shared the price book

2 with Core-Mark?

3 A. They have not to us -- or myself.

4 Q. Right. Has anyone at Enerbase, Shawna

5 Chilcoat, Tony Bernhardt or anyone else, ever said

6 to you that Enerbase has a contract with Core-Mark

7 so it cannot buy product from Northern Bottling,

8 Pepsi product?

9 A. Shawna's told me before that they had an

10 agreement, and I'm not sure if that meant a

11 contract, but it was an agreement with Core-Mark to

12 buy to a certain point and that Tony wanted to

13 honor his agreement. Now, if that was his word or

14 written, I don't know.

15 Q. And no one ever showed you anything in

16 writing on that?

17 A. No, they have not.

18 Q. When -- strike that.

19 During the 2015 time period, did you ever

20 have any discussions with anyone at Northern about

21 the danger of losing shelf space at Enerbase stores

22 to Coke that would arise out of following a policy

23 of not supplying any Pepsi products to Enerbase?

24 A. I don't know if I would discuss something

25 that specific, but it's always a concern to us when

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1 our competitor gains more shelf space because it

2 increases their shares, so it would be a personal

3 concern of mine.

4 Q. But notwithstanding that concern, you

5 would not make a proposal to supply at wholesale

6 price any Pepsi products that a customer like

7 Enerbase could not get from Core-Mark?

8 A. I --

9 MR. RAGAIN: Object to the form. Go

10 ahead.

11 THE WITNESS: I don't recall making any

12 proposal.

13 Q. (MR. QUINN CONTINUING) Okay. Do you know

14 whether there was ever any discussion or analysis

15 inside Northern Bottling about the risk of losing

16 shelf space to Coke by virtue of not selling

17 anything at all to Enerbase?

18 A. As far as an analysis, a numbers analysis,

19 I don't believe so. I mean it's -- again, it's --

20 it's our industry knowledge as beverage people

21 telling us that if we lose all that space, it's

22 going to affect our share. So it is a concern,

23 yeah.

24 Q. So that would be a reason, would it not,

25 to want to supply as much Pepsi product as you

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1 could to the Enerbase stores?

2 A. It would be a reason, but it would

3 conflict with our equitability partnership with our

4 other customers that were following our programs.

5 Q. But if you -- you charged Enerbase the

6 same or even higher price than you charged to other

7 customers, where would there be an equity concern?

8 A. To be honest, I'm not sure, I mean, if it

9 would be on the perception of the other customers.

10 You know, we've always been of the mind that if

11 we're not willing to offer it to one customer,

12 we're not going to offer it to the group.

13 Q. Yeah, but you could say to the other

14 customer, They're paying full wholesale price. You

15 get a discount with the CDA; right?

16 A. That's correct.

17 Q. So another CDA. I'm going to show you

18 what's been marked as Deposition Exhibit 11, which

19 purports to be a copy of Northern Bottling's 2016

20 CDA. The Bates numbers for this exhibit are NB TB

21 0000020 through 47.

22 A. I have 21. I don't --

23 Q. I'm sorry. 21. You're right. It is. I

24 correct myself. The first page of the exhibit is

25 NB TB 0000021. This is a copy of the 2016 CDA,

1 isn't it?

2 **A.** That looks correct.

3 **Q.** Okay. Did you participate in the process

4 of putting together this CDA?

5 **A.** I did.

6 **Q.** And if you look at the page 24, that's the

7 2015 local market analysis?

8 **A.** Correct.

9 **Q.** Was this analysis prepared sometime in the

10 fall of 2015?

11 **A.** That would be my assumption. It's when

12 we --

13 **Q.** Fall or --

14 **A.** -- do the planning.

15 **Q.** -- early winter; is that --

16 **A.** Correct.

17 **Q.** -- right? Okay.

18 So at this point in time you say, "The

19 overall market has declined, primarily due to

20 slowed energy growth particularly in some parts of

21 western North Dakota"; correct?

22 **A.** Correct.

23 **Q.** How significant in your assessment was the

24 overall market decline in the C&G market?

25 **A.** Without having the numbers in front of me

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1 or having access to the numbers, it was

2 double-digit declines in what we refer to western

3 North Dakota, which would be the Stanley market and

4 close to the Dickinson market.

5 **Q.** Did it also include the Minot market?

6 **A.** The whole market as a whole was affected,

7 but there were definitely pockets where there was

8 high-energy sector where they saw a

9 larger-than-average decline.

10 **Q.** Did Minot fit within that

11 larger-than-average-decline pocket?

12 **A.** They were right in the middle. If -- I'll

13 give an example. If Stanley was 30 percent, Minot

14 might be 20 and farther east would be 10.

15 **Q.** Okay. And -- and once again in this

16 particular analysis, you talk about retailers

17 becoming more aggressive with pricing, promotions,

18 customer loyalty programs and the like. In other

19 words, the -- the pricing pressure on C&G stores in

20 the territory increased?

21 **A.** Pricing pressure on the market in general

22 increased, including C&G stores.

23 **Q.** And that was in 2015 as compared with '14?

24 **A.** Correct.

25 **Q.** Okay. Did you see also an increase in the

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1 presence of the large chain accounts in terms of

2 beverage product sales in the C&G market?

3 **A.** I'm not sure if I understand the question.

4 **Q.** I was just looking at your -- your bullet

5 point here, "Competition for traffic will continue

6 to increase, and we will continue to see a larger

7 entry of chain accounts with aggressive promotional

8 schedules to drive traffic to recognized national

9 banners."

10 **A.** That was pertaining to the national

11 retailers telling us that they were going to expand

12 further into North Dakota --

13 **Q.** I see.

14 **A.** -- and to expect additional outlets.

15 **Q.** And that would put even more pricing

16 pressure on customers like Enerbase which were

17 independent con -- convene -- convenience and gas

18 chains; right?

19 **A.** It would be their perception, but I would

20 imagine so.

21 **Q.** Yeah. Well, you would agree that -- I

22 mean based on your own assessment that customers

23 like Enerbase would feel more competitive pressure

24 from the large national chains; right?

25 **A.** I would agree as the market gets smaller

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1 and the number of outlets increase, it's going to

2 have competitive pressure no matter who you are.

3 **Q.** So, in general, did Northern Bottling

4 lower its prices to convenience and gas customers

5 in connection with the 2016 CDAs in acknowledgment

6 of the competitive pressures that these customers

7 were facing?

8 **A.** Well, when you say lower your prices,

9 there's multiple facets and programs that the

10 retailer has control of where they'd have a price

11 increase or decrease, so --

12 **Q.** Fair enough. Let me break it down then.

13 Did Northern Bottling lower its wholesale price to

14 independent convenience and gas operators in the

15 face of the competitive pressure that these

16 operators faced?

17 **A.** I don't believe we've lowered wholesale

18 prices.

19 **Q.** At all?

20 **A.** Usually -- and it's been my experience

21 that wholesale prices will go up, but I've rarely,

22 if any, seen them go down.

23 **Q.** Did Northern Bottling in 2016 increase its

24 funding discounts to independent convenience and

25 gas customers in order to lower the net price that

1 they had to pay for Northern Bottling's Pepsi
 2 products?
 3 **A.** It looks like to me there was an
 4 additional program added in the gold program that
 5 allowed for another option to get additional
 6 discounts, so the customer would have the
 7 availability to lower their net price.
 8 **Q.** And that's if they allocated more shelf
 9 space to Northern Bottling's products; right?
 10 **A.** That's correct.
 11 **Q.** Aside from the addition of the gold
 12 program, was there any other increase in the
 13 funding that Northern Bottling provided to the C&G
 14 customers?
 15 **A.** To my knowledge, the base funding -- the
 16 base CDA funding during the 2016 CDA process hasn't
 17 changed.
 18 **Q.** Stayed the same as 2015?
 19 **A.** To my knowledge, yes.
 20 **Q.** Okay. So you didn't have a lot of tools
 21 to work with to try to get Enerbase to come back as
 22 a customer as you headed into the latter half of
 23 2015, did you -- pricing tools that is?
 24 **A.** Pricing tools. That would assume that we
 25 solely rely on price to sell the product. We rely

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1 on many other tools to sell our product rather than
 2 price.
 3 **Q.** But you didn't lower the price in any way
 4 to try to win back Enerbase as a customer as you
 5 headed into 2016, did you?
 6 **A.** We gave them an option at one point to
 7 lower their CSD price but to take an increase on
 8 their non-carb pricing.
 9 **Q.** What would the overall impact be to
 10 Northern Bottling on that price matrix change?
 11 **A.** I don't understand the question.
 12 **Q.** I'll -- I'll try to phrase a better
 13 question for you. In the proposal that you made to
 14 Enerbase which would lower the CSD price but
 15 increase the non-carb price, what was the net
 16 effect of that on the revenues that Northern
 17 Bottling would earn from Enerbase?
 18 **A.** I couldn't speak to that not having the
 19 numbers right in of me. As the sales mix moves
 20 more towards non-carb, and we explained this to
 21 Enerbase, it was in their benefit to get a lower
 22 non-carb pricing than it would be to a CSD pricing.
 23 So, like I said, without having the exact numbers,
 24 I couldn't answer you specifically.
 25 **Q.** So I'm -- I'm confused. I thought you

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1 said that you raised the price of non-carbs and
 2 lowered the price of CSDs. Did I have that
 3 backwards?
 4 **A.** That's correct. That's the option that
 5 Enerbase chose.
 6 **Q.** So they actually wanted a lower CSD price?
 7 **A.** They wanted a lower CSD price and took the
 8 non-carb increase.
 9 **Q.** Okay. Well, looking at the last half of
 10 2015, can you describe for us the efforts that you
 11 made to continue to try to win back Enerbase as a
 12 Northern Bottling customer?
 13 **A.** A lot of my efforts were in communication,
 14 making sure our lines of communication was open,
 15 not only to Shawna but her managers and her staff.
 16 Keeping them informed of what's happening in the
 17 market, whether the market's up, down, sideways,
 18 new products. So, again, a lot of it was just
 19 trying to keep in communication with them.
 20 **Q.** Mm-hmm. And at some point you had a
 21 breakthrough; right?
 22 **A.** We did.
 23 **Q.** When was that?
 24 **A.** I can't remember the exact date, but it
 25 was in a form of an e-mail from Tony letting us

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1 know that they would entertain the option of
 2 listening to some of our programs.
 3 **Q.** Let me show you what the court reporter
 4 has previously marked as Hillestad Deposition
 5 Exhibit 12. It's a multipage document, and it has
 6 Bates numbers 000111 through 0000120.
 7 **A.** I have 121.
 8 **Q.** Oh, I did it again, huh? Yes, you're
 9 right. 121. I apologize.
 10 Take a look at that, and after you've done
 11 it, can you identify this as a series of e-mail
 12 exchanges involving you and Enerbase personnel and
 13 Northern Bottling personnel relating to your
 14 efforts to win back Enerbase as a customer for
 15 Northern?
 16 **A.** Okay. It looks like an e-mail.
 17 **Q.** Okay. Would you start by taking a look at
 18 the -- the first e-mail in the chain, which is back
 19 on pages 120 and 121. That's a copy of an e-mail
 20 that you sent to Shawna Chilcoat and Tony
 21 Bernhardt; right?
 22 **A.** That's correct.
 23 **Q.** And this was your effort to -- to -- to
 24 try to get off on the right foot for 2016?
 25 **A.** It was an effort to trying to get a

1 meeting.
 2 Q. Get a meeting.
 3 And in the first sentence you're talking
 4 about Enerbase's 2016 plan; correct?
 5 A. Correct.
 6 Q. Were you referring to the 2016 CDA?
 7 A. I was referring to what their objectives
 8 as a company were for 2016.
 9 Q. Okay. At the point in time that you sent
 10 this e-mail to Shawna and Tony, had you formalized
 11 or firmed up the 2016 CDA?
 12 A. By December it would be a pretty good
 13 assumption saying it was pretty firm.
 14 Q. Do you know whether you had presented it
 15 prior to the e-mail of December 21, 2015?
 16 A. I would imagine I have. We -- usually
 17 around October, November everything's pretty firmed
 18 up when we start presentations.
 19 Q. Okay. Then let's talk about that for a
 20 minute. What do you recall about presenting the
 21 2016 CDA to Enerbase?
 22 A. I believe after Tony gave us permission to
 23 start talking to Shawna again, we had an initial
 24 discovery meeting of some of their goals and what
 25 they were looking to see for 2016. We showed them

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1 our 2016 program, so they were aware of what's
 2 being offered to our other customers and some of
 3 the market data we put in those, and it was just
 4 essentially what they were looking for.
 5 Q. When did Tony give you permission to talk
 6 to Shawna?
 7 A. In one of these e-mails. So it would be
 8 this e-mail, looks like sent from Tony on
 9 February 12.
 10 Q. Okay. Of 2016; right?
 11 A. That's correct.
 12 Q. Okay. What I was asking about is you
 13 mentioned that the -- the -- the 2016 CDA was
 14 firmed up sometime around October or thereabouts of
 15 2015 --
 16 A. That's --
 17 Q. -- right?
 18 A. -- when it usually is. Yes.
 19 Q. Okay. Did you send a copy of the CDA to
 20 Enerbase before your December 2015 e-mail to -- to
 21 Tony and Shawna?
 22 A. I don't believe I did.
 23 Q. Okay. All right. All right. So -- so,
 24 in other words, this e-mail was to try to be an ice
 25 breaker to have a chance to present and to -- to

1 learn a little more about Enerbase's plans in 2016?
 2 A. That's correct.
 3 Q. Okay. So Tony then sent you this e-mail
 4 that is on pages 118 and 119 on December 22, 2015;
 5 correct?
 6 A. It appears so, yes.
 7 Q. Okay. That was a pretty tough e-mail that
 8 he sent, wasn't it?
 9 A. Us salespeople have pretty thick skin,
 10 so --
 11 Q. But you'd agree it was a pretty tough
 12 e-mail?
 13 A. He was trying to make a point.
 14 Q. And what he said in the first sentence is,
 15 "I'm trying to think of a reason as to why Enerbase
 16 should allow Northern Bottling to revisit us and
 17 why. At this point I can't see a reason to have a
 18 conversation with your group. Your division failed
 19 to be competitive in" -- "in the past with pricing
 20 issues and didn't allow Enerbase to be competitive
 21 and profitable with the big chain store pricing
 22 with our cost pricing. It took what we did with
 23 our decision to alarm Northern Bottling to the
 24 point of taking our store back and not being
 25 dictated or leveraged with your cooler space and

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1 programs at the time."
 2 And then he goes on to say, "I would have
 3 had it no other way than to continue with your
 4 division, but lost trust and dependability in what
 5 Northern Bottling could service our account with,
 6 all of our locations made our decision to not to
 7 continue with you. I don't see that much has
 8 changed other than to possibly lure Enerbase back
 9 in with an attractive price offering and then back
 10 to price hikes for the future."
 11 That's what he wrote; right?
 12 A. That's what it says.
 13 Q. Do you have any reason to believe that he
 14 was just blowing smoke?
 15 A. I couldn't dispute what he --
 16 MR. RAGAIN: Object to the form. Calls
 17 for speculation. Go ahead.
 18 MR. QUINN: Well, no, it doesn't, Jim.
 19 I'm asking if he's got any reason to believe.
 20 Q. (MR. QUINN CONTINUING) And I'm just
 21 asking for your understanding, not to put yourself
 22 in the head of Mr. -- when you read that, you
 23 understood you had an angry former customer that
 24 you were going to have to work very hard to get
 25 back, didn't you?

1 **A.** I understand it would be a challenge -- a
 2 challenge of a sale, which is --
 3 **Q.** And you didn't think after reading this
 4 e-mail that Bernhardt was really angry at Northern
 5 Bottling?
 6 **A.** Well, again, what he thought, I'm not
 7 qualified to say.
 8 **Q.** I'm asking about you. What did you think
 9 when you read that?
 10 **A.** What I thought is he may have been blowing
 11 off steam. I don't -- I didn't perceive it as
 12 closing a door on anything. If he would have
 13 closed the door on something, you know, we would
 14 have continued to try to work with him as we can.
 15 That's what we do.
 16 **Q.** But as a good salesman, you understood
 17 that you had an angry customer that you were going
 18 to have to work hard to convince to start buying
 19 Northern Bottling beverage products again; right?
 20 **A.** I understood that we had a customer with
 21 issues to overcome and that's what I would have to
 22 do.
 23 **Q.** Some pretty significant issues; right?
 24 **A.** Well, according to him, it is.
 25 **Q.** Okay. And he's the customer?

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1 **A.** That's true.
 2 **Q.** Okay. So you then wrote back a pretty
 3 long e-mail to him on December 23, 2015; isn't that
 4 right?
 5 **A.** Looks correct.
 6 **Q.** And you showed that e-mail to Mr. Langer
 7 Gokey to make sure it was all right to send out?
 8 **A.** I'm not sure if -- if Langer would have
 9 seen it. I'm sure I would have it proofed by
 10 someone, most likely Mr. Peterson.
 11 **Q.** We'll deal with that point in a moment,
 12 but let's -- let's focus on what it is that you
 13 sent out.
 14 **MR. QUINN:** Okay. I think maybe we better
 15 take a break. I'd rather not, but we've got a -- a
 16 tape change so we don't want to run out.
 17 **THE VIDEOGRAPHER:** This is the end of tape
 18 four. We're off the record at 2:32.
 19 (Recessed at 2:32 p.m. and reconvened at
 20 2:41 p.m. Ms. Tucker is now present.)
 21 (Deposition Exhibit 13 was marked for
 22 identification.)
 23 **THE VIDEOGRAPHER:** This is the start of
 24 tape five. We are back on the record at 2:41.
 25 **Q.** (MR. QUINN CONTINUING) Okay. So we were

1 talking about Exhibit 12, Mr. Hillestad, in
 2 particular your e-mail to Tony Bernhardt and Shawna
 3 Chilcoat of December 23, 2015. You see this --
 4 this is an e-mail you sent to those two in response
 5 to Mr. Bernhardt's question to you why should we
 6 take you back; right?
 7 **A.** Correct. Correct.
 8 **Q.** And this was your attempt to give him some
 9 reasons why?
 10 **A.** To address some of his concerns.
 11 **Q.** Okay. And -- and in that regard in the
 12 first paragraph, you say, "As I discussed in my
 13 first meeting with Shawna, Stuart and Scott in
 14 December of last year when I took over the account,
 15 I acknowledge that we as a company made some
 16 mistakes in the past in regards to the handling of
 17 certain issues and customer service support";
 18 right?
 19 **A.** Correct.
 20 **Q.** Okay. And those are the mistakes that
 21 you've talked about in your deposition today?
 22 **A.** Correct.
 23 **Q.** Why did you think it was important to say
 24 that to him in your e-mail?
 25 **A.** I believe that that was one of his

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1 concerns, and as a good salesperson you should
 2 address his concerns.
 3 **Q.** Okay. Did you -- did you think that
 4 statement was untrue in any way that you made in
 5 this e-mail?
 6 **A.** I had some different opinions of what good
 7 customer support is. There are customers that
 8 believe that we should be there every second; there
 9 are customers that are happy with being there once
 10 a week. So not knowing his particular reference
 11 points, again, we have to make certain assumptions.
 12 **Q.** But you said to him, "I acknowledge that
 13 we as a company made some mistakes in the past."
 14 **MR. RAGAIN:** Objection. Asked and
 15 answered and --
 16 **Q.** (MR. QUINN CONTINUING) Well, that's what
 17 you said --
 18 **MR. RAGAIN:** -- the document speaks --
 19 **Q.** (MR. QUINN CONTINUING) -- in the e-mail.
 20 **MR. RAGAIN:** -- for itself.
 21 **Q.** (MR. QUINN CONTINUING) That's what you
 22 said in the e-mail; right?
 23 **A.** That's correct.
 24 **MR. QUINN:** This is the author of the
 25 document, Mr. Ragain.

1 Q. (MR. QUINN CONTINUING) And what I want to
2 know is whether you believe that what you said was
3 untrue in any way.

4 A. I believe that I was addressing his
5 concern of customer support. Whether I believed we
6 did provide poor customer support, again, is in the
7 person that's -- not sure of the best word --
8 standards.

9 Q. Are you saying that you -- you -- you used
10 these words, "I acknowledge that we as a company
11 made some mistakes," because you knew that
12 Mr. Bernhardt believes that Northern Bottling had
13 made some significant mistakes in its customer
14 service in the past?

15 A. Well, I believe based on his previous
16 e-mail that he believed that Northern Bottling made
17 some mistakes and I wanted to acknowledge that
18 as -- in addressing his concern.

19 Q. Okay. Okay. And you say in that same
20 paragraph, "We have worked very hard to correct the
21 issues that your management team brought to my
22 attention during those discussions. Reassignment
23 of overall responsibility for the Enerbase accounts
24 to me was the first step, since I am responsible
25 for the majority of our chain accounts activity."

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1 Do you see that?

2 A. I do.

3 Q. And that was -- when you -- in that
4 sentence, you were referring, were you not, to
5 reassignment of responsibility from Troy Brezden to
6 you for the Enerbase account; right?

7 A. That's correct.

8 Q. Okay. Then in the next paragraph you say,
9 "You spoke about losing trust in our company in
10 regards to the ability to service your locations.
11 From what I have learned of our recent history,
12 this was a valid concern and you have a right to
13 feel as you do."

14 When you wrote that, what had you learned?
15 You said "from what I have learned." What
16 investigation had you done to inform that sentence
17 that you wrote?

18 A. What I learned is what essentially the
19 customer told us the issues they had in our initial
20 meeting.

21 Q. And you agreed that the customer's concern
22 was a valid one; right?

23 A. I agreed that it was a concern of theirs
24 and we -- we would address it.

25 Q. And you used the words it was a valid

1 concern, did you not?

2 A. I did.

3 Q. Okay. So after you sent this e-mail to
4 Mr. Hillestad --

5 A. Bernhardt.

6 Q. I'm sorry, Mr. -- Mr. Hillestad.

7 After you sent this e-mail to

8 Mr. Bernhardt, did you get any reply or did you
9 send another e-mail to him?

10 A. Looks like I sent another e-mail on the
11 6th of January 2016.

12 Q. And that was to -- to try to boost the
13 process along and hopefully get an opportunity to
14 sit down with them?

15 A. Yeah. It was a follow-up to the first
16 e-mail trying to get a meeting.

17 Q. Okay. And he then responded to you on
18 February 12, 2016?

19 A. That's correct.

20 Q. So there was a -- a whole month lag time
21 between your e-mail and his response?

22 A. That's what it looks like, yeah.

23 Q. Did you have any contact with anyone at
24 Enerbase during that one-month period?

25 A. I don't believe so.

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1 Q. Okay. So you were just waiting to hear
2 back?

3 A. That's correct.

4 Q. In Mr. Bernhardt's e-mail to you, he says,
5 "I will not agree to a contract of percentage of
6 doors or anything like that. Come up with a new
7 idea and pitch that to us on how you can show value
8 of why we should buy from you as well."

9 Did you then come up with a new idea to
10 pitch to him as he had requested?

11 A. We had the initial meeting with Shawna to
12 address their plans for 2016. Again, we showed
13 them our twenty-six [sic] CDA showing them what we
14 were offering other customers and what we believed
15 the market was doing, and then worked to model
16 whatever they wanted based off our CDA program.

17 Q. So you based your new idea on your
18 conversations with Shawna Chilcoat to try to find
19 out what Enerbase was looking for?

20 A. That's correct.

21 Q. Did -- did she say at any time during that
22 period when you were having discussions with her
23 that there was an agreement with Core-Mark that
24 would prevent Northern Bottling from getting back
25 into the account?

1 A. There were discussions, and I'm not sure
2 when it was, in one of our meetings that she
3 alluded to an agreement that Tony made to buy from
4 Core-Mark for a certain period of time. Whether
5 that was verbal or written, that was never
6 discovered.

7 Q. Okay. But that wasn't something that
8 deterred you from continuing to pitch Enerbase, was
9 it?

10 A. No.

11 Q. And so whatever there might have been
12 between Enerbase and Core-Mark, you went after
13 Enerbase to regain it as a customer in late
14 December through February of 2016; right?

15 A. Yeah, in order -- we pursued every
16 customer including Enerbase to gain additional
17 business.

18 Q. Right. But in Enerbase's case, you had to
19 get back into the account, not just get additional
20 shelves; right?

21 A. Correct.

22 Q. Before the break, you had indicated that
23 you were not sure whether or not Mr. Gokey had
24 reviewed your e-mail to Tony Bernhardt before you
25 sent it out --

1 to Mr. Bernhardt to Mr. Gokey before you sent it
2 out?

3 A. I'm not sure if I sent it to him or
4 Mr. Peterson did --

5 Q. Okay.

6 A. -- for his comments, which was usually how
7 that -- our chain would work. I would deliver to
8 Mr. Peterson. If Mr. Peterson felt it was valid,
9 he would deliver it to Mr. Gokey.

10 Q. In any event, you were on the receiving
11 end of the last e-mail --

12 A. Correct.

13 Q. -- which contained his content -- com --
14 comments; correct?

15 A. Correct.

16 Q. Okay. Now, portions of -- of what
17 Mr. Gokey suggested that you include in your letter
18 to Mr. Bernhardt did not make their way into the
19 final letter; right?

20 A. Correct.

21 Q. Why not?

22 A. I looked at it as a sales perspective of
23 this is the first conversation -- conversation to
24 about 20 conversations, and to introduce all that
25 information within the first conversation may have

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1 A. Correct.

2 Q. -- do you recall that?

3 Let me just show you Exhibit 14 -- I'm
4 sorry, is that -- 13. I apologize. And this is
5 a -- a series of e-mail exchanges. You will see as
6 you look at this -- well, first of all, the Bates
7 numbers are NB LG 0000557 through 568. Would you
8 please take a look at that, Mr. Hillestad, and
9 after you've done that confirm for me this is a
10 series of e-mail exchanges in which you were
11 involved and including Langer Gokey, Will Gokey,
12 Bruce Peterson between December 21, 2015, and
13 December 22, 2015. And after you've had a chance
14 to take a look at the document, if you can confirm
15 to me that this is a true and correct copy of those
16 e-mail exchanges, I would appreciate it.

17 A. The recent e-mails look like they were
18 between Langer, Bruce, Will and myself but not the
19 previous ones.

20 Q. The earlier ones were actually duplicates
21 of the e-mails between you and Mr. Bernhardt which
22 I showed you in Exhibit 12; correct?

23 A. That's correct.

24 Q. So does this refresh your recollection
25 about whether or not you showed your draft response

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1 been counterproductive at that point.

2 Q. You thought it would be coming on too
3 strongly?

4 A. I'm not sure I would classify it as too
5 strongly, but it wasn't the point I was trying to
6 make with the first conversation.

7 Q. Okay. You thought you needed to just go
8 slower in terms of developing -- redeveloping that
9 relationship with Enerbase?

10 A. Correct.

11 Q. Now, ultimately you succeeded in getting
12 back into the account?

13 A. Correct.

14 Q. Could you tell us how that came about.

15 A. Our first initial was Tony's e-mail giving
16 us permission to talk to Shawna, which was the
17 e-mail of -- I'm not sure if it's in this chain.
18 It was in the previous chain.

19 Q. Well, let's take your efforts from and
20 after the -- the time you sent him the longer
21 response, February 12, 2016. That's if it -- if it
22 gives you a point of reference, if you'll look at
23 Exhibit 12, it's page 112.

24 A. Okay. Could you repeat the question?

25 Q. Okay. So could you describe for us your

1 efforts to win back the Enerbase business after
 2 February 12, 2016.
 3 **A.** My personal efforts were again to
 4 reestablish that communi -- communication with
 5 Shawna and her team, to look what they had in mind
 6 for their twenty-six [sic] plans and how we would
 7 fit in that -- 2016 plans.
 8 **Q.** Did you ultimately propose a program to
 9 Enerbase?
 10 **A.** I wouldn't call it a program. Their
 11 initial insights to what they would like to see is
 12 we did a tour of all the stores between Shawna,
 13 myself and the representative from American
 14 Bottling of saying which shelves would be available
 15 for us to put product in. And then based off that
 16 discussion, we would then go back and talk to our
 17 counterparts and see if there was any funding
 18 available that we could put together a program.
 19 **Q.** Funding from Pepsico?
 20 **A.** Pepsico, DPSG, Rockstar, any of our --
 21 **Q.** Were you able to obtain any funding for
 22 those programs?
 23 **A.** Not directly from them besides our
 24 existing funding, our L&F funding, our per-case
 25 funding from Pepsi and our different funding

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1 entities through the different companies.
 2 **Q.** So you could tap one or more of those
 3 buckets of funding to be able to put together a
 4 program for Enerbase?
 5 **A.** We get buckets of funding based on certain
 6 criteria from our suppliers. How we tap that is
 7 essentially an internal company decision.
 8 **Q.** Right.
 9 **A.** Yeah.
 10 **Q.** Okay. But -- but those were the buckets
 11 that you tapped to put together this program?
 12 **A.** Correct.
 13 **Q.** What sort of funding did you provide to
 14 Enerbase in order to win the business back?
 15 **A.** Based on the number of shelves they wanted
 16 to allocate and the products that they wanted to
 17 put in there, we came back with a funding amount on
 18 pricing that they agreed with or didn't agree with.
 19 In this particular time they agreed with.
 20 **Q.** Did you offer them the same wholesale
 21 prices that you offered to all your other
 22 customers?
 23 **A.** Wholesale, yes.
 24 **Q.** So the -- the difference in price then
 25 was -- was the funding that you were able to put

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1 together?
 2 **A.** The funding which was higher than all the
 3 other customers.
 4 **Q.** In other words, you gave Enerbase a bigger
 5 discount than the other customers in order to win
 6 the business back?
 7 **A.** Less of a discount.
 8 **Q.** Less of a discount.
 9 So Enerbase today is paying a higher price
 10 for Pepsi products than a similarly situated
 11 convenience and gas outlet that has entered into a
 12 CDA with Northern?
 13 **A.** They're paying a higher price on their
 14 non-carbs, which was the options that we prepared
 15 for them: A higher price on non-carbs or a lower
 16 price on CSD. They chose the lower price on CSD
 17 and higher on the non-carbs.
 18 **MR. QUINN:** Let me show you an exhibit
 19 that I'll ask the court reporter to mark as
 20 Exhibit 14, which purports to be a multipage
 21 document with the Bates numbers 0000144, dash, 150.
 22 (Deposition Exhibit 14 was marked for
 23 identification.)
 24 **Q.** (MR. QUINN CONTINUING) Mr. Hillestad,
 25 would you take a look at this exhibit, and after

1 you've had a chance to do that, can you confirm for
 2 us that this is a true and correct copy of an
 3 e-mail that you sent to Langer Gokey, Bruce
 4 Peterson and Will Gokey dated March 17, 2016, and
 5 attaching a proposed pricing schedule that you were
 6 suggesting for Northern Bottling [sic]?
 7 **A.** Looks correct.
 8 **Q.** Okay. So this is, in fact, an e-mail that
 9 you sent to Mr. Gokey laying out your proposed
 10 pricing plan for Northern -- or for Enerbase?
 11 **A.** Yes. That's correct.
 12 **Q.** Okay. Could you just walk us through the
 13 grid that you have, generally describing how you
 14 went about calculating these products' pricing and
 15 also identify the acronyms -- or describe for us
 16 the acronyms in the heading of the -- the grid.
 17 **A.** It's a little hard to read through being
 18 printed this way, but I'll attempt to.
 19 **Q.** Yeah. I understand that, you know, these
 20 were PDFs, again, and I think they were broken into
 21 two PDFs. So it appears that 147 and 148 are part
 22 of the -- of the same grid --
 23 **A.** Mm-hmm.
 24 **Q.** -- is that right?
 25 **A.** Correct.

1 Q. Okay.

2 A. So you have your first column, which is

3 the Single Serve Products, which is the different

4 product packages we offer. And then you have the

5 Proposed Enerbase Pricing, which is the higher on

6 price for the non-CDA account. And then you have

7 the All Other CDA Customer Pricing, those -- that

8 pricing that CDA customers get for having a CDA,

9 and then the difference between those two amounts

10 on the first page.

11 Q. Okay. So just so we understand it then,

12 if you take the top one, 20-ounce CSD, you were

13 proposing that Enerbase would pay \$29.90 for a

14 case?

15 A. That's correct.

16 Q. Other convenience and gas -- independent

17 convenience and gas outlet chains were paying

18 \$27 --

19 A. 27 --

20 Q. -- with funding?

21 A. Everybody's convenience C&G price -- or

22 CDA price is a little bit different depending on

23 the optional program they sign up for.

24 Q. Right.

25 A. So this is a pricing -- what we would call

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1 a UDS pricing. If someone would come in to buy it

2 off the street or start a business, without a CDA

3 program this is the price they would have got.

4 Q. I see. Okay. So -- so that All Other CDA

5 Customer Pricing is the -- sort of the wholesale

6 price that a C&G customer would pay without a CDA?

7 A. It's the base discount off of wholesale --

8 Q. Okay.

9 A. -- before the CDA discounts kick in.

10 Q. Okay. When did a customer -- was it

11 entitled to get a base discount off of wholesale?

12 A. If you refer to any of the CDAs -- and I

13 would just pull out 2015, 0000155, which is NCB

14 Base Funding.

15 Q. Okay. I see what you're saying. So there

16 is -- there is some CDA funding in -- in that

17 particular column?

18 A. There's a base funding rate. There's very

19 few, if any, that I can think of where someone will

20 pay full wholesale.

21 Q. Well, doesn't this particular grid show

22 that even for non-carbonated products the CDA

23 customers were getting a lower price than Enerbase?

24 A. It does.

25 Q. Okay.

1 A. And the next page breaks down the unit

2 cost -- I'm sorry, the next page, 148, is an

3 extension of the first page --

4 Q. Right.

5 A. -- 147 for the different packages.

6 Page 149 is a breakdown of the unit cost of the --

7 which I believe is the proposed Enerbase pricing,

8 so 29.90 divided by 24 should be 1.25. What we

9 believe Enerbase would retail at, what all other

10 customers are retailing at, the difference between

11 those two price points and then the profit and

12 margin that Enerbase would make.

13 Q. Did you actually propose this pricing plan

14 to Enerbase?

15 A. I proposed this pricing plan, but probably

16 put it in a different spreadsheet format so they

17 could better walk through it. This was for Mr. --

18 for Mr. Gokey's illustration so he knew where our

19 local market was compared to Enerbase.

20 Q. But the same numbers were in the plan you

21 proposed to Enerbase?

22 A. One of the plans, yes.

23 Q. Okay. When did you propose -- or, first

24 of all, how many plans did you propose to Enerbase?

25 A. There was the initial plan which

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1 essentially is this pricing where they were going

2 to continue to buy some of the product from

3 Core-Mark and some of the product from us, and then

4 they would have got an additional discount when

5 they transferred all the business to us.

6 Q. Back to Northern?

7 A. Yep. And that was a second plan. And

8 then the third plan was when they asked for a lower

9 CSD pricing and we came up with we can get the

10 lower CSD but the non-carb wouldn't change.

11 Q. Okay. Could you walk us through a

12 timeline when each of these different proposals

13 took place.

14 A. I couldn't tell you exact timeline. I

15 want to say it was probably all within a month,

16 month and a half between several meetings.

17 Q. So between March and April 2016?

18 A. Yeah. From the point where Tony gave us

19 the okay till we actually started doing the resets

20 where we put the product in, yes.

21 Q. Okay. So the numbers we see here in

22 Exhibit -- in this particular Exhibit 14 are not

23 the final numbers, in other words?

24 A. Not as their pricing sits today, no.

25 Q. Okay. So as of today, how many shelves of

1 space has Northern Bottling gotten back from the
 2 Enerbase stores for Pepsi and DPSG products?
 3 **A.** I wouldn't know that off the top of my
 4 head. We would have that documented in some kind
 5 of scheduled space, so I'd have to look that up.
 6 **Q.** Is it -- is Core-Mark still supplying any
 7 product to Enerbase stores, any Northern Bottling
 8 product?
 9 **A.** Core-Mark is not, no.
 10 **Q.** Okay. So Core-Mark's completely out with
 11 respect to the beverage products that Northern
 12 Bottling supplies to Enerbase?
 13 **A.** Correct.
 14 **Q.** Okay. When did that happen?
 15 **A.** That would have happened I believe around
 16 July, first part of July, where they made the
 17 transition to stop ordering Core-Mark's six base
 18 flavors and went to fully off our truck.
 19 **Q.** What are the Core-Mark base flavors?
 20 **A.** It was the 20-ounce products and the
 21 one-liter products of Pepsi, Diet Pepsi, Mountain
 22 Dew®, Diet Mountain Dew®, Dr Pepper and Diet Dr
 23 Pepper.
 24 **Q.** Why do you believe that Enerbase stopped
 25 buying from Core-Mark and let Northern Bottling

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1 back into the account?
 2 **A.** Well, there's a couple why I personally
 3 believe. One, I think we were able to demonstrate
 4 to them our value as a local bottler. Another
 5 attribute was we believe the Core-Mark price was
 6 starting to move up. Shawna let us know on a
 7 couple occasions that they were seeing several
 8 price increases from Core-Mark on their 20-ounce
 9 and there was less a discrepancy. And third is
 10 there was a new competitor in the market, Coca-Cola
 11 High Country, and they weren't being very
 12 aggressive with their programs and their service.
 13 So they wanted to look at different options.
 14 **Q.** Could you explain the last part of your
 15 answer. Coca-Cola High Country is a -- a Coke
 16 bottler or Coke distributor?
 17 **A.** It is a -- the Coke distributor -- I
 18 believe they're based out of South Dakota and they
 19 were re-franchised into the North Dakota area,
 20 which was the Coca-Cola Enterprises. They
 21 re-franchised their bottler, so Coca-Cola High
 22 Country took them over.
 23 **Q.** And Coca-Cola High Country's prices are
 24 less competitive than CCE's prices used to be?
 25 **A.** That was what we ascertained.

1 **Q.** Okay. So the Northern prices looked
 2 better in relation to the Coke prices?
 3 **A.** In my opinion, they do.
 4 **Q.** Okay.
 5 **A.** High Country was charging a higher price
 6 than CCE. Now, what they showed Enerbase, I have
 7 no idea.
 8 **Q.** So was Northern able to take back shelf
 9 space from Coke?
 10 **A.** Some of the space we got back was from
 11 Coca-Cola.
 12 **Q.** What's happened with Gatorade products?
 13 **A.** Gatorade products are being supplied by
 14 Morelli's Distributing out of Minot.
 15 **Q.** Okay. Morelli's is transshipping the
 16 Gatorade products?
 17 **A.** From what I've heard is they are buying it
 18 from a third-party vending company called Vistar
 19 and then in turn selling it to Enerbase.
 20 **Q.** Okay. So are you continuing to try to get
 21 back into the Enerbase account with the Gatorade
 22 products?
 23 **A.** We are.
 24 **Q.** What are the issues that are preventing
 25 Northern Bottling from getting the Gatorade product

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1 into Enerbase stores?
 2 **A.** There is two issues. One was pricing.
 3 Their pricing was below our floor cost. And, two,
 4 that Shawna told us that she made an agreement with
 5 Morelli's, a verbal agreement, and she wanted to
 6 keep her word through the end of the year. But
 7 after that, that they would take another look at
 8 it.
 9 **Q.** Do you have a schedule of the current plan
 10 in place at Enerbase?
 11 **A.** Are you referring to the shelf sets --
 12 **Q.** The Northern Bottling --
 13 **A.** -- the planograms?
 14 **Q.** Yes.
 15 **A.** Yes, I do.
 16 **Q.** Okay.
 17 **MR. QUINN:** I'd just ask the court
 18 reporter to mark as Hillestad Deposition Exhibit 15
 19 a multipage document Bates stamp numbered 000064
 20 through 72, and I will get a copy for you in a
 21 second here.
 22 (Deposition Exhibit 15 was marked for
 23 identification.)
 24 **Q.** (MR. QUINN CONTINUING) Mr. Hillestad, do
 25 you recognize Exhibit -- group Exhibit 15 as a cold

1 vault planogram update dated April 11, 2016, that
2 you sent to Shawna Chilcoat at Enerbase as well as
3 Scott Carlson?

4 **A.** Stuart Carlson.

5 **Q.** Stuart Carlson. I'm sorry.

6 **A.** 64 through 72?

7 **Q.** Yes.

8 **A.** I do recognize it as an e-mail.

9 **Q.** I'm sorry.

10 **A.** I do recognize it as an e-mail.

11 **Q.** Okay. So I realize this is only as of

12 April of 2016, but does this, the second page of
13 this document, page 65, show the progression of
14 winning back shelf space from Enerbase?

15 **A.** This particular -- number 65 is a
16 progression of the variety of iterations we went
17 through when setting the cold vault. So we would
18 come up with a plan, they would bounce it back to
19 Coke, Coke would change it, we'd -- and we'd keep
20 track of every time it was changed.

21 **Q.** I see. I see. So is there a document
22 that shows the final, meaning as of today, array of
23 shelf space at Enerbase that's allocated to Coke,
24 Pepsi and these other -- other beverage vendors?

25 **A.** I wouldn't say as of today, but as of

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1 probably the last month there is.

2 **Q.** Okay. But not -- I didn't quite
3 understand your answer.

4 **A.** It's not current as of today.

5 **Q.** Okay.

6 **A.** It would have been based off a survey
7 probably done a month ago.

8 **Q.** I see. So you made further progress in
9 July, and so there's more shelf space allocated to
10 Northern Bottling now than there might have been a
11 month ago?

12 **A.** It would be the last time we updated the
13 planograms. So facings change all the time. We
14 try to update them as much as we can, so as we get
15 updates, we change our internal data.

16 **Q.** Okay. Has Mr. Bowers or Mr. Neari or any
17 of the other PepsiCo personnel who interface with
18 Northern continued to assist Northern in its
19 efforts to win back Enerbase as a customer?

20 **A.** I'm not sure what you're asking.

21 **Q.** What I'm trying to figure out is has
22 PepsiCo been supportive of Northern Bottling's
23 efforts to win back Enerbase as a beverage customer
24 in 2016?

25 **A.** In my opinion, Larry has done what seems

1 to be what he is capable of doing as providing
2 assistance to us. You know, I can't speak much to
3 Paul. I don't have much interaction with Paul.

4 **Q.** Is there anything else that you think
5 Larry should be doing than what he's doing right
6 now to help you win back Enerbase?

7 **A.** And, again, I'm not sure exactly what
8 function or how much reach Larry has, but he seems
9 to be genuine when talking to us and saying he's
10 doing the best he can.

11 **Q.** And what about PepsiCo as a whole, as a
12 company?

13 **A.** Beyond Larry and a couple of the other
14 marketing people I talk to, I don't speak to too
15 many people within PepsiCo.

16 **Q.** So you don't have an opinion one way or
17 another about PepsiCo as a whole and its efforts to
18 assist Northern in winning back Enerbase as a
19 customer?

20 **A.** In my own opinion, I don't see them making
21 an effort. I mean beyond what Larry has suggested
22 and helped that he would be there if we wanted him
23 to talk to them or by our side, other than that, I
24 haven't seen any effort put forth from them with
25 Enerbase in particular.

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1 **Q.** What sort of effort would -- have you
2 suggested that Pepsi provide?

3 **A.** I don't know if I've personally made the
4 suggestions, but one of the early on -- not
5 solutions I'm going to say, but one of the ideas
6 that Pepsi had was to again cover that gap between
7 our CDA funding and what they believe Core-Mark was
8 selling it to from, and nothing materialized from
9 that.

10 **Q.** Okay. Did you other than, you know,
11 Pepsi's general funding that it provides to
12 Northern Bottling?

13 **A.** Are you asking if they provided any
14 additional funding?

15 **Q.** Well, I'll ask a better question. Has the
16 level of funding that Pepsi provides to Northern
17 Bottling increased, decreased or stayed the same
18 over the last two, three years?

19 **A.** To my knowledge -- I can't really speak to
20 the last two, three years. To my knowledge, in the
21 last six months it's stayed the same; and, again,
22 to my knowledge, in the previous six months it's
23 stayed the same. So that --

24 **Q.** How about before that?

25 **A.** Before that, I'm not sure if it went up or

1 went down without seeing some kind of documents in
2 front of me.

3 Q. Do you believe that additional funding
4 from Pepsi would help win back Enerbase and address
5 other issues relating to Core-Mark transshipments?

6 A. I believe any additional help that any of
7 our companies supply us would be appreciated and
8 helpful, whether it -- it would be a deciding
9 factor, I can't speak to that.

10 Q. Well, would you use that funding to offer
11 a different price to a customer that was
12 considering buying Pepsi from a different source if
13 that meant that the customer's prices would be out
14 of line with the rest of Northern's customers?

15 A. We would consider using that funding if
16 they were allowing us to use that funding to all of
17 our other customers to keep equity in the market.

18 Q. Today is Core-Mark transshipping any
19 product into Northern's territory, Pepsi product?

20 A. Yes.

21 Q. Okay. To which customers?

22 A. To the Cenex group in Devils Lake, and
23 there is another group owned by I believe the
24 Wonnenbergs, one store in Minot, and that's through
25 Core-Mark.

1 document with Bates numbers NB TB 0001351 through
2 53.

3 (Deposition Exhibit 16 was marked for
4 identification.)

5 Q. (MR. QUINN CONTINUING) Take a look at
6 Exhibit 16, Mr. Hillestad, and after you've had a
7 chance to review it, can you confirm for us that
8 this is a true and correct copy of a series of
9 e-mails in which you were a participant relating to
10 deliveries to Cenex stores?

11 A. 1351 through 1353?

12 Q. Yes.

13 A. Yes. This is a series of e-mails --

14 Q. Okay.

15 A. -- between myself, Mr. Brezden, Mr. Shaw,
16 Mrs. Smith.

17 Q. Is -- do these e-mails discuss a service
18 problem with the Enerbase outlet at Xpress Mart?

19 A. They discuss the issue I just alluded to
20 with the one-liters being misstacked that we
21 corrected.

22 Q. Okay. And you were particularly concerned
23 that there wouldn't be any service issues
24 especially during this period that you were trying
25 to win back Enerbase as a customer; right?

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1 Q. How many stores are in the Cenex group in
2 Devils Lake?

3 A. Three.

4 Q. Do you know whether Northern Bottling has
5 filed transshipment complaints with Pepsi's
6 transshipment enforcement office?

7 A. I don't know, but I know that I reported
8 the codes to Mr. Peterson who would then --

9 Q. He'd be the one responsible for forwarding
10 that information on to Pepsi?

11 A. That's correct.

12 Q. Does Enerbase continue to have any service
13 issues with -- strike that.

14 Does Northern Bottling continue to have
15 any service issues with Enerbase outlets?

16 A. Not to my knowledge. The only service
17 issues that have been brought up to me since that
18 point would -- there was one time where a driver
19 misstacked some one-liters, so we went down there
20 and re-stacked the one-liters for them. But to my
21 knowledge, talking to the managers on a regular
22 basis now, they've all been fairly happy with our
23 efforts.

24 MR. QUINN: Would you mark as Deposition
25 Exhibit 16, Ms. Court Reporter, a three-page

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1 A. This was a period where we were delivering
2 I believe the full line products, being in May, and
3 I wanted to make sure that the Minot division who
4 was responsible for servicing those accounts was
5 aware of what was going on and that they help to
6 follow up on any issues.

7 Q. Okay. Troy says, "We will not be able to
8 gain our credibility back with this customer," if
9 these service problems persist; right?

10 A. Is that on 1352?

11 Q. 1351, I believe.

12 A. 51.

13 Q. Is that what you understand -- understood
14 him to write?

15 A. Yes.

16 Q. Okay. Has Northern also been able to
17 regain its shelf space for DPSG products?

18 A. Yes.

19 Q. Back to the level it had before Enerbase
20 kicked Northern out of the account in
21 February 2015?

22 A. I'd have to have the current schedule in
23 front of me to answer that completely.

24 Q. What's your -- your best recollection?

25 A. I would speculate we're a little short

1 from where we were previous, and a lot of it's
 2 coming from the Gatorade that's being transshipped.
 3 Q. Has Northern ever had a problem where some
 4 of the product that it delivers to a customer gets
 5 transshipped to another bottler's territory?
 6 A. There was one instance and it could have
 7 been several -- eight years ago where we had a
 8 customer in Stanley move some 12-packs over to a
 9 sister store in Tioga.
 10 Q. And how did that happen?
 11 A. We sold them a pallet of products, they
 12 then put it on one of their own trucks and shipped
 13 it over to Tioga. We were notified by the bottler
 14 in that area that that had happened. We responded,
 15 if I remember this correctly, because I was the one
 16 who responded to it, within hours, explained to the
 17 customer the transshipping procedures and how that
 18 was not within our agreement, and they stopped
 19 immediately.
 20 Q. Did Northern have to pay a fine in
 21 connection with that?
 22 A. I'm not sure.
 23 Q. Okay. Now, to your knowledge, Northern
 24 hadn't done anything to suggest to the customer
 25 that it sell the product to this transshipper;

1 right?
 2 A. No.
 3 Q. Okay. Do you have any reason to believe
 4 that Pepsico had suggested at any time to Core-Mark
 5 that it transship into Northern's territory?
 6 A. Are you asking me my personal opinion on
 7 what Pepsi is thinking -- Pepsico?
 8 Q. I'm asking you your opinion based upon
 9 your experience in the marketplace, the Minot
 10 marketplace, and -- and what you -- based on what
 11 you've seen and observed in that marketplace with
 12 respect to Core-Mark transshipping.
 13 A. That Pepsico was selling to Core-Mark?
 14 Q. That Pepsico is either selling or
 15 encouraging Core-Mark to transship product to
 16 customers like Enerbase.
 17 MR. RAGAIN: Object to the form of the
 18 question. It's compound.
 19 MR. QUINN: All right. We'll break it --
 20 fair enough.
 21 Q. (MR. QUINN CONTINUING) Do you have any
 22 reason to believe based upon your experience and
 23 knowledge of this marketplace that Pepsi is selling
 24 beverage products to Core-Mark with the knowledge
 25 that Core-Mark in turn is selling those beverage

1 products to customers in Northern's market?
 2 A. I have not talked to anybody from Pepsico
 3 that has said that they're selling those products
 4 to a third party that is then selling it to
 5 Core-Mark, so that would limit my knowledge of what
 6 I believe what they were doing, if that makes
 7 sense.
 8 Q. Yeah. So you don't have any knowledge of
 9 Pepsi selling directly to Core-Mark?
 10 A. Not personally, no.
 11 Q. Okay. Do you have any reason to believe
 12 that Pepsi would encourage Core-Mark to transship
 13 beverage products into Northern's territory?
 14 A. I personally believe -- and I don't know
 15 if Pepsico as a whole, as a giant entity, would
 16 encourage it, but they're getting the product from
 17 somewhere. Now, I don't know, beyond the
 18 manufacturer codes where we see that product come
 19 from, where it goes from A to C.
 20 Q. You understand the transshipment policy to
 21 impose a pretty steep fine on any manufacturer of
 22 Pepsico beverage products that's the source of
 23 transshipment whether or not it was intended;
 24 right?
 25 A. I wouldn't say I fully understand the

1 exact procedure of transshipment. I understand
 2 that there is a fine that is imposed on the -- if
 3 this is the correct word -- infringing bottler that
 4 would transship that product into another
 5 territory.
 6 Q. Well, my question's a little different.
 7 Talk about a source bottler, a bottler who
 8 manufactured a prod -- product that may have gone
 9 through one or two or maybe even three different
 10 customers in a distribution chain and ultimately
 11 that bottler paid a transshipment fine. That's the
 12 question. Could be an independent bottler, could
 13 be a Pepsi bottler, you know, a PBC bottler. Do
 14 you understand that the source bottler pays a very
 15 substantial transshipment fine whether or not the
 16 bottler intended that the product be transshipped?
 17 MR. RAGAIN: Object to the form of the
 18 question as vague.
 19 Q. (MR. QUINN CONTINUING) You can answer it.
 20 A. I understand that the source bottler gets
 21 a fine. I'm not sure exactly what that fine is,
 22 how substantial that is, how that gets processed
 23 through the system, but I'm aware there's a fine.
 24 Q. Does Northern Bottling have any program or
 25 policy to prevent transshipment of products that it

1 sells in its territory to another bottler's
 2 territory?
 3 **A.** It is in all agreement under the general
 4 terms.
 5 **Q.** In the CDA agreements?
 6 **A.** That's correct. Not only in the CDA
 7 agreement but any agreement we write.
 8 **Q.** So any agreement that Northern enters into
 9 with its customers prohibits those customers from
 10 transshipping the product?
 11 **A.** Yes.
 12 **Q.** Does it also prohibit those customers from
 13 buying transshipped -- transshipped product from a
 14 bottler outside Northern's territory?
 15 **A.** Yes.
 16 **MR. RAGAIN:** Object --
 17 **Q.** (MR. QUINN CONTINUING) Okay.
 18 **MR. RAGAIN:** -- to the form. You're
 19 asking for a legal opinion.
 20 **MR. QUINN:** Well, I'm not, and the witness
 21 has answered. And, of course -- why don't we take
 22 a short break. I'm getting pretty close to being
 23 done, and I'll take a look at my notes and figure
 24 out whether there's any other questions I want to
 25 ask.

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1 **THE VIDEOGRAPHER:** We're going off the
 2 record at 3:30. This is the end of tape five.
 3 (Recessed at 3:30 p.m. and reconvened at
 4 3:40 p.m.)
 5 **THE VIDEOGRAPHER:** We're back on the
 6 record at 3:40.
 7 **Q.** (MR. QUINN CONTINUING) I just have a
 8 couple of follow-up questions, Mr. Hillestad, and
 9 then we're almost done.
 10 **A.** Okay.
 11 **Q.** I'd like to ask you about the -- the
 12 transshipping that's occurring with respect to the
 13 Devils Lake stores and then the one store in Minot
 14 and the Morelli's transshipment of Gatorade
 15 products to Enerbase.
 16 **A.** Okay.
 17 **Q.** Are you continuing to attempt to get back
 18 into those locations with Northern Bottling
 19 products?
 20 **A.** We are.
 21 **Q.** Okay. Let's take the situation with
 22 Enerbase and Morelli's. What are you doing in that
 23 regard?
 24 **A.** In that regard we continue -- again, keep
 25 an open line of communication. They've told us

1 that it is a pricing issue. They're getting it
 2 below our floor cost, and that they've -- Shawna
 3 has made a verbal agreement with Morelli's to
 4 continue with them through the end of the year and
 5 she wants to honor her word.
 6 **Q.** Have you been monitoring the Gatorade
 7 products on the shelves of those Enerbase stores?
 8 **A.** We've taken down the codes, I've sent them
 9 to Mr. Peterson and he's, I believe, sent them in.
 10 **Q.** Okay. Has Enerbase received the full line
 11 of Gatorade beverage products since it began to get
 12 these from Morelli's?
 13 **A.** Full line is kind of vague. There's many
 14 Gatorade products. To my recollection, I believe
 15 they're getting eight 32-ounce products and three
 16 Propel products.
 17 **Q.** So they're not receiving any smaller size
 18 Gatorade than 32-ounce?
 19 **A.** Just 32-ounce and the Propel that --
 20 **Q.** Okay.
 21 **A.** -- I'm aware of.
 22 **Q.** Have you made a pitch to Enerbase to
 23 purchase different package sizes in Gatorade
 24 products?
 25 **A.** We've showed them our sales data compared

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1 to a 28-ounce bottle that we sell up against a
 2 32-ounce bottle and that the customers prefer the
 3 28s -- 28-ounce bottle and the difference in sales
 4 that it showed.
 5 **Q.** Okay. Has anyone at Enerbase shown any
 6 willingness to consider purchasing those products
 7 from Northern Bottling?
 8 **A.** Essentially the 28-ounce and the 32-ounce
 9 are similar products. The 32-ounce is a product
 10 that's only supposed to be sold to grocery and a
 11 28-ounce is a product that's only supposed to be
 12 sold to C&G, so in their mind the products are
 13 interchangeable.
 14 **Q.** What about the smaller size Gatorade
 15 products? Have you made a pitch to try to sell
 16 those in the -- in the Enerbase outlets?
 17 **A.** In that case it's a Propel half-liter,
 18 again, that's made to be sold at the grocer that
 19 they're breaking up. And it's a cost issue. We
 20 can't -- what they're telling us their cost is is
 21 below our floor cost.
 22 **Q.** Okay. Is there not a Gatorade size
 23 product smaller than 28 ounces?
 24 **A.** There's a 20-ounce Gatorade product --
 25 **Q.** Right.

1 **A.** -- that Enerbase has chosen not to buy.
 2 They believe it doesn't sell.
 3 **Q.** Okay. So that's not an issue of
 4 transshipment. They just don't want a 20-ounce
 5 product?
 6 **A.** That's correct, what they've told me.
 7 **Q.** And, to your knowledge, have -- have
 8 either you or your salespeople continued to
 9 determine the production codes for these products
 10 and then report them to Pepsi, that is the Gatorade
 11 products that Morelli's is selling to Enerbase?
 12 **A.** We did the initial report. We sent that
 13 in -- or Mr. Peterson sent that in. I recall Larry
 14 Bowers asking us to confirm that report because the
 15 numbers weren't matching up with our production
 16 facility, so we sent a second report. To my
 17 knowledge, those are the only two reports that I've
 18 passed on.
 19 **Q.** Have there been other shipments of
 20 Gatorade products since then?
 21 **A.** Yes.
 22 **Q.** Okay. And are you not recording the
 23 production numbers and reporting those
 24 transshipments to Pepsi?
 25 **A.** My understanding is once we report the

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1 initial transshipment --
 2 **Q.** I see.
 3 **A.** -- is they send the investigators in to --
 4 **Q.** Right.
 5 **A.** -- do that.
 6 **Q.** So it's the investigator's job to --
 7 **A.** Right.
 8 **Q.** -- to continue to report? Got it.
 9 Okay. How about the -- the Cenex group in
 10 Devils Lake? What efforts are you making to
 11 recapture the -- the products that that outlet is
 12 receiving from Core-Mark?
 13 **A.** Similar efforts what we made at Enerbase.
 14 We're trying to keep those communication lines
 15 open. We're trying to talk to the managers on a
 16 weekly basis, showing them the market data, showing
 17 them the innovation, showing them the new products,
 18 along those lines.
 19 **Q.** Do they receive the -- again, the full
 20 line of Gatorade products from -- or other products
 21 from Core-Mark?
 22 **A.** I believe they're receiving, again, about
 23 eight 32-ounce Gatorade products and they're
 24 receiving four 13.7-ounce Starbucks products.
 25 **Q.** Okay. And the rest they get from Northern

1 Bottling?
 2 **A.** No. Nothing is being --
 3 **Q.** Oh, they don't get anything.
 4 **A.** -- sold from Northern Bottling. They're
 5 buying 20-ounce from Core-Mark, 20-ounce CSD.
 6 **Q.** Okay. And that applies to the full range
 7 of Northern's products?
 8 **A.** It's the six core and the one-liter and --
 9 **Q.** Got it.
 10 **A.** -- 20-ounce as I spoke earlier about.
 11 **Q.** And so other than the six core, they're
 12 continuing to buy from Northern?
 13 **A.** No. They're just buying from Core-Mark.
 14 **Q.** Did they buy products other than the six
 15 core from Northern before the transshipment began
 16 there?
 17 **A.** Yes.
 18 **Q.** Which products did they buy?
 19 **A.** They bought our full line of what we sold.
 20 **Q.** So now the -- the Devils Lake group is --
 21 is buying nothing from Northern?
 22 **A.** That's correct.
 23 **Q.** Okay. Did you get any explanation from
 24 the Devils Lake people as to why they're not buying
 25 anything at all?

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1 **A.** We were told by their general manager that
 2 they wanted us to remove a section of our CDA
 3 agreement that PBC was willing to remove and we
 4 would not do that.
 5 **Q.** What is that section?
 6 **A.** They wanted to not count the Monster
 7 shelves, which is sold and distributed by Coke,
 8 against Coke's agreement.
 9 **Q.** And that factors into the percentage of
 10 shelves devoted to Pepsi as opposed to Coke or some
 11 other producer?
 12 **A.** That's correct.
 13 **Q.** Okay. What difference in terms of funding
 14 did it make to not count the Monster shelving?
 15 **A.** In our funding?
 16 **Q.** Yes.
 17 **A.** It would be the difference whether they
 18 would receive the non-carb funding versus not
 19 receiving it.
 20 **Q.** Okay. So they would otherwise be in the
 21 red category and get no funding?
 22 **A.** They would still get the base funding.
 23 They --
 24 **Q.** I see.
 25 **A.** -- just wouldn't get the additional

1 non-carb funding.
 2 Q. Okay. And so because you were unwilling
 3 to -- to treat Monster as a -- as a non-Coke
 4 product, they said, We're going to kick you out of
 5 the whole account?
 6 A. Yes.
 7 Q. So what are you doing to -- to try to
 8 regain shelf space in the Devils Lake stores?
 9 A. Again, the -- the same tactics, keeping
 10 communication lines open, interacting with them as
 11 to what their plans are, like talking to them on
 12 what the innovations are, what the product
 13 categories are doing, what the market's doing.
 14 Just trying to keep them informed of everything.
 15 Q. Are you making any adjustments in the CDA
 16 program in order to win them back?
 17 A. No.
 18 Q. How about any other funding buckets?
 19 A. Not that I'm aware of, no.
 20 Q. Store in Minot, what was the name of that
 21 store again?
 22 A. I'm not sure what the exact name -- we've
 23 called it the Amoco store. They've changed banners
 24 quite a few times, but I believe they're owned by
 25 the Wonnenberg family.

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1 Q. So does Northern continue to supply
 2 product to that store?
 3 A. We do not.
 4 Q. So that's another one where Northern's
 5 completely out?
 6 A. Yeah. They're buying everything from
 7 Core-Mark.
 8 Q. Okay. What do they buy from Core-Mark?
 9 A. They buy -- to my knowledge, it's again
 10 the six core and the -- and the CSD and the
 11 one-liter. I believe they're buying 12-pack cans,
 12 some Starbucks products. Last time I checked I
 13 believe there was some Muscle Milk products, some
 14 Rockstar products, but it's been at least I want to
 15 say four, five months since I've been there. Troy
 16 Brezden is the one monitoring that account. But,
 17 again, the transshipping, we filed the claim, so
 18 the investigators should be in there.
 19 Q. They'd be looking at that?
 20 A. (Nods head.)
 21 Q. Does Core-Mark supply the full line of
 22 Northern Bottling products to that Amoco outlet?
 23 A. I'm not sure the full line of our
 24 products. They're supplying certain products. You
 25 know, I'm not sure what their capabilities are and

1 what they're buying and what they're not buying.
 2 Q. Well, it's the same question that I've had
 3 with respect to the others then. Why is it that --
 4 that Northern Bottling is not able to supply any
 5 product, including products that Core-Mark may not
 6 be offering, to that Amoco outlet?
 7 A. Are you asking why that particular store
 8 is choosing not to buy?
 9 Q. Right. To your knowledge, based on your
 10 knowledge.
 11 A. To my knowledge, it's preference of
 12 ownership of that store.
 13 Q. That they don't want to do business with
 14 Northern?
 15 A. Correct, from what I understand.
 16 Q. Is there some issue between people at
 17 Northern Bottling and the owner of that store that
 18 would give rise to that decision?
 19 A. Not that I'm aware. I have pretty limited
 20 knowledge to that particular account being one
 21 store and not being a chain, so it more falls under
 22 our sales manager.
 23 Q. Okay. Who is that?
 24 A. Troy Brezden.
 25 Q. Troy Brezden. Okay.

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1 MR. QUINN: Okay. I have no further
 2 questions at this time. I think there was a
 3 document or two that Mr. Hillestad mentioned that
 4 we may not have seen, so I'm going to at least
 5 reserve our right to ask questions about that
 6 but -- because I don't think they may have been
 7 produced, but other than that, I have no more
 8 questions today.
 9 MR. RAGAIN: I have none.
 10 THE VIDEOGRAPHER: This is the end of the
 11 deposition of Todd Hillestad and the end of tape
 12 six. We are off the record at 3:51.
 13 (Concluded at 3:51 p.m., the same day.)

CERTIFICATE OF COURT REPORTER AND NOTARY PUBLIC.

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF BURLEIGH)

I, Stephanie A. Smith, a Registered Professional Reporter and a Notary Public duly commissioned and qualified in and for the County of Burleigh, State of North Dakota,

DO HEREBY CERTIFY that, pursuant to notice or agreement, there came before me at the time and place hereinbefore indicated the named witness, who was by me duly sworn to testify to the truth and nothing but the truth touching and concerning the matter in controversy in this cause; that said witness was thereupon examined under oath and said examination reduced to writing by me; that the foregoing and attached typewritten pages contain a full, true, accurate and correct transcript of my shorthand notes, as they purport to contain, then and there taken; and that there was no request made to review the transcript pursuant to Rule 30(e) of the Federal Rules of Civil Procedure.

I DO HEREBY FURTHER CERTIFY that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 22nd day of August, 2016.

Stephanie A. Smith
Court Reporter and Notary Public
Burleigh County, Bismarck, N.D.
My Commission expires: 6-19-22

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